

ICANN

**Moderator: Gisella Gruber-White
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Coordinator: ...like to remind all participants this conference is being recorded. If you have any objections, you may disconnect at this time. You may begin.

Benedetta Rossi: Thank you very much, (Kelly). Good morning, good afternoon, good evening. This is a BC member's call taking place on the 2nd of May 2013. On the call today we have (Jim Pinoloswede), (unintelligible), Elisa Cooper, Janet O'Callahan Angie Graves, Ron Andruff, (Emit O'Keefe), (Joseph Corwin), Steve DelBianco, Chris Chaplow, (Richard Fridman), (Andrew Hanson) and we have apologies from John Berard and Stephane Van Gelder.

I would like to remind all participants to please state their names before speaking for transcription purposes. Thank you very much and over to you, (Steve).

Steve DelBianco: Thanks Benedetta. Appreciate the turnout. We'll get this done in one hour. Our purpose today is to figure out what the BC wants to say about the proposed final registrar accreditation agreement or RA.

For those of you in Adobe, Benedetta has posted my notes or outline up there and for those not on Adobe, the email that went out 45 minutes ago has the same outline with link to the public comment page and the RAA (unintelligible).

I was talking to Anjali and Elisa Cooper about a potential approach today because we ought to be able to get this done in an hour and we thought a three-part outline would be the easiest, the first part being privacy and proxy specs. The second is WHOIS. And third is this new registrant rights enforcement.

If we have time, we can take on other topics as well. Anjali, as (unintelligible) volunteer, had already developed the beginnings of a draft and that was, of course, before they published a brand new RAA, a proposed final one.

And these comments won't be due until the 14th - the 13th or May, so we've got a little bit of time to get it together. So let's see if we can come up with closure on it today. Any questions before we start? Great, so the first item up is privacy and proxy specifications and I'm glad we have Elisa on the line and I think you're pretty familiar with that as well.

So is Susan Kawaguchi who I think will provide some input even if she doesn't make the call. This is a two-page specification on the way the privacy and proxy registrations have to be managed but it's really supposed to be temporary, right, because they're supposed to be a community driven process to define an accreditation process for privacy and proxy providers.

But until that gets done, this specification will have been here temporarily. Elisa, I know that you are - I think you're driving right now but if you're in a

position where you can weigh in, please just jump in but I think what we wanted to talk about...

Elisa Cooper: I am at the office.

Steve DelBianco: Oh, great. So what I put in here is one item on the privacy proxy spec which is that there's no service level in here for how quickly or in what way the privacy proxy provider has to relay the communication to the protected registrant and then present him with evidence of actionable harm how they have to reveal the data to the complainant.

So any of you who are online, you can click on that hyperlink right there and it'll take you to that two-page spec to what we're focusing on this 2.43 which is relay and 2.45 which is reveal. So why don't we take a queue. Let's just start with you, Elisa, about what you think the (BP) ought to ask for here.

Elisa Cooper: Well, I think that it's great. First of all, I mean, I would applaud the fact that they're addressing this and laying down some guidelines that registrars should post on their Web sites what their policies and procedures are but basically that's all that this new agreement is requiring, is that the registrars describe what their policies and procedures are, what the procedure for reveal is, what the procedure for relaying communications is.

But there's no specificity as to what the time period for that to occur is. There's nothing that's prescriptive in terms of how it should be done. It's basically just saying that the registrars should provide this information.

But there's no way, because there's nothing that's prescriptive about it, there's very little that compliance could actually do. So, like I don't - it's great that they, you know, that the registrars and ICANN have decided to include

something about this specifically but there's no way to really enforce compliance except to just say, "Well, have you posted something on your Web site? Great, you have. You're in compliance."

Steve DelBianco: Elisa, let me ask you something - the way through...

((Crosstalk))

Steve DelBianco: Go ahead. Sorry, go ahead.

Elisa Cooper: Okay, so what I would like us to ask for are some timeframes for what the time period is that the registrar must ensure that the, you know, information on WHOIS is revealed and what's basically upon request, you know, within whatever it is, 48 or 72 hours that information is provided, you know, or something along those lines. I'd like to see there be some actual timeframe so that compliance - ICANN compliance can do something about it if it's not occurring.

Steve DelBianco: I have a few questions for you, Elisa. You mentioned that they disclosed - they don't even disclose how they do it. They only disclose the circumstances under which they would do a relay. So that might indicate that if you provided them the kinds of communications under those circumstances, we would relay.

But they don't say how quickly they would relay. And they also don't describe how they'll relay. We assume it's email but we don't really know. and then on reveal, again, the only thing they're forced to disclose is the circumstances under which they would do a reveal but not the method of reveal or, as you say, the timing.

So I wanted to you a question about compliance. In the old days, the obligations of a privacy proxy provider to do relay and reveal were based into one provision in the RAA under which the failure to do an adequate relay and reveal meant that the registrar became liable for activities of a registrant.

Elisa Cooper: Right.

Steve DelBianco: Is that still enforced in the new RAA?

Elisa Cooper: I don't know. I would assume so.

Steve DelBianco: Anyone else on the call can weigh in on that and help us understand? You see, because if the registrar - if the privacy proxy provider ends up having their own incentives to relay reveal, I'm not sure you also need a compliance mechanism based on timing and method because if they fail to relay and reveal, the presumption in the previous agreement was that they become liable. Anjali, with your head buried in the new RAA, do they still have the section?

Anjali Hansen: I'm going to have to - let me get it open to that. I'm not as buried as I should be, to tell you the truth.

Ron Adruff: (Steve), this is Ron Adruff calling in. Sorry, for me, just a quick question. The link I posted here in the chat, the link - it goes to rights and responsibilities. I don't think it goes to the proxy spec. Can someone check that link because I'm - you're talking about 2.5. There is no 2.5 in that link document.

Steve DelBianco: All right, what - here's what (I'm going to refer back to), the - if you click on the comment page, Ron, the very first link, and I must've messed that up. I'm sorry, but if you click on the very first one, the public comment page, you'll

see if you scroll down, ICANN has provided a link to this spec, the privacy proxy spec.

Ron Adruff: Great. Thanks very much.

Steve DelBianco: Thank you. Sorry about that.

Anjali Hansen: There's a - oh yes.

Elisa Cooper: So this is Elisa. I think it's still the case that if the information were not revealed, that the responsibility would - for the domain would fall to the privacy or proxy provider.

Steve DelBianco: Okay, so Elisa confirmed that it look - Elisa, do they have a section for that?

Elisa Cooper: I don't - no, I don't know. I mean, I (unintelligible) I believe it would be the case because they're listed as registrant, so.

Steve DelBianco: I think it's 3.7.7.3 on Page 13 where they say that a registered name holder licensing the use of a name shall accept my ability for (farm cause) unless it discloses the current contact information within seven days to a party providing them evidence of actionable harm. So I believe on Pages 13 and 14 of the proposed RAA, they have a seven day reveal.

Elisa Cooper: I'm sorry, 3.7.7.7?

Steve DelBianco: That's right. Page - dot 3.

Elisa Cooper: Oh, dot 3.

Steve DelBianco: Yes. So it looks as if they've got a seven day locked in. Those of you who have spent time trying to track down somebody, a registrant who was hiding behind a privacy proxy, do you believe that seven days is an appropriate time to reveal when you've presented evidence of actionable harm? I'll take a queue on that.

Elisa Cooper Well, that's what it says (unintelligible). I think that's correct.

Steve DelBianco: Is it adequate? Now, hearing nothing, we'll assume that the seven days in there at least as a specification. Interesting that it's not in the specification on privacy and proxy. Instead, it's very buried back in their registrar agreement. Should the BC ask that this specification, the two-pager, should we ask that it incorporate the seven day time performance on 2.45?

Elisa Cooper I think that's a good idea. Otherwise, I think it's very confusing.

Steve DelBianco: There's an interesting line at the very top of this new specification. The very last sentence of the first paragraph says, quote, "This specification may not be modified by an IPN or a registrar."

So this particular specification seems to be locked down and so I guess ICANN may argue that they didn't want to put specific times and performance metrics in here since they're rather have those be back in the registrar accreditation agreement which is subject to change under that new process.

So there may be a risk, Elisa, to sort of importing that seven day performance back here because then if it turns out that's really inadequate, it won't - we won't be able to change it. And it could be years before we end up with a new accreditation system for privacy and proxy providers. Any thoughts on that?

Elisa Cooper: Well, why would they be able to - why would - I mean, assuming - what if they get rid of that line? I mean, what keeps them from modifying that specification at the time they modify the agreement?

Steve DelBianco: There was this - that special line that says, "This specification may not be modified by ICANN or a registrar." For those of you who have looked at the RAA, it does have a method of amendment but that amendment, they'd only be able to be done in the agreement and not necessarily on a specification that has this definitive statement in it. And it may not be modified. So doesn't that statement of may not be modified override ICANN's ability to make unilateral changes?

Elisa Cooper: I don't know.

Steve DelBianco: Okay.

Elisa Cooper: I mean, the plan is that this is an interim specification, right, that they're going to be working on this and replace this?

Steve DelBianco: That's right.

Elisa Cooper: On the privacy and proxy registration. So they're supposed to be working on something. So until they...

Steve DelBianco: Okay. But it'll be a communitywide process to come up with an accreditation and an accreditation process or proxy, I mean, Elisa, to be honest, two years, right?

Elisa Cooper: Right.

Steve DelBianco: Does anybody think it'll be sooner than two years? Doubt it. So we found the seven day number and so the BC, in their draft comments, so Anjali, I'm hoping that as (repertoire), you'll be able to follow through on this and then...

Anjali Hansen: Yes, I'm writing it all down.

Steve DelBianco: Thank you. Yes, so part of this recommendation is to bring that seven day performance spec over into the privacy and proxy specification and then ask the question why isn't there a spec for a relay which is two items above it in the list?

Why isn't there a similar spec anywhere on how many days a privacy proxy provider has to do the relay? The relay is just taking the email that you sent in and then relaying it to the secret contact information that the privacy proxy provider has.

Elisa Cooper: Okay.

Chris Chaplow: This is Chris Chaplow. Can I come in?

Steve DelBianco: Oh, please do, Chris.

Chris Chaplow: On the relay aspect, at a practical level, I'm wondering whether we could ask that the relay provider confirm within seven days that they have a relay. Because I've got a couple of examples where you ask for information to be relayed and you don't know whether it's this big black hole, whether the registrar's actually got it or what's happened.

The things I've dealt with, it's copyright infringement, you know, photographs and (text is) being copied from the Web site. And I rather feel

that if you could get some (message) back, you - therefore information (at all) is happening.

Steve DelBianco: So did everyone understand? Chris Chaplow is suggesting that you provide evidence of actionable harm to the privacy proxy provider and if they fail to relay and reveal seven days later, they start to take on the obligation.

So in day one, a responsible privacy proxy provider will probably be relay or email to the secret contact info. What Chris is saying is, if the BC should ask ICANN to require that the privacy proxy provider provide an acknowledgement to the person providing the complaint, then the acknowledgement would say we have relayed your information to the protected registrar. Is that about right, Chris?

Chris Chaplow: That's correct, (Steve). Yes.

Elisa Cooper: I agree with that.

Steve DelBianco: It's an acknowledgement and confirm. Okay, Anjali, take note of that because it probably would be the method with respect to 2.43 - the method. And (unintelligible) is in the queue.

(Ron): Thank you (Steve), it's (Ron). So for those of us in - on the call who aren't quite familiar with what this replacement element is going to be, so if I understand you correctly, is this privacy proxy specification has to still be fleshed out.

And is that going to be part of the PDP? And if so then - or if it's going to some other element, I'd be interested to know what that is. But then the second question is why would we not have a placeholder in the agreement that

would actually say, “This is where we will insert this particular redefined element when it is finally - comes out of the oven as a fully baked cake?”

Because in this stage of the game, I’m confused. We’re talking about something that’s going to be replaced but vague. You know, can you clarify that for me, please? Thank you.

Steve DelBianco: (Ron), the process by which an accreditation procedure will be developed and (is not identified) but you can bet that it’ll involved a PDP-like element. But when it comes up on the accreditation process, then providers for privacy and proxy would become accredited and that would replace this specification.

I don’t believe they would fill in gaps on this little two-page spec. I believe this disappears. The program, which is referenced in 3.14 of the agreement, we can go back to that. If somebody - if you have it up and you open up the actual RA and go to 3.14 - let me quickly pull that up.

Elisa Cooper: I think one important date to keep in mind is the date that they put in the specifications of privacy and proxy registration. And they say basically until the earlier - January 1, 2017 and the date that ICANN establishes a program, so I mean, this thing could stand for a long time.

Steve DelBianco: It could, and when it falls, it gets eliminated. It disappears from the agreement and instead, registrars would be required to only use accredited privacy and proxy service providers.

So then you have to turn to that separate accreditation program to understand what the rules are for them. That’s what 3.14 is basically getting at. I don’t know if that answers your question, (Ron).

(Ron): I'm still swimming in in a little bit but that brings a little more clarity. Thank you, (Steve).

Steve DelBianco: I believe that the bar is raised for us to get our licks in now because this is the last review and it contains the line, "This specification may not be modified by ICANN or a registrar." For the folks that are on the call, do you believe the BC should challenge that statement and suggest that the specification itself also ought to be subject to the amendment process and agreed to? Any thoughts on that?

Anjali Hansen: I'm confused. This is Anjali. I'm confused as to how they are planning to amend that specification. Can you explain that as it's currently...

Steve DelBianco: The statement and the specification says they - it may not be modified.

Woman: Right and...

Steve DelBianco: So that makes it an affirmative statement - ever. Ever. To me, that's what it says.

Anjali Hansen: That doesn't make any sense to me that you can never modify something, so I would object if that's actually what they're trying to accomplish.

Steve DelBianco: What - do other members of the BC agree with that, that we ought to object to that unilateral lockout?

Elisa Cooper: Well, (Steve), I think maybe - I kind of read it like they cannot sort of unilaterally modify it on their own, which I think we agree with.

Anjali Hansen: Right. I would agree with that. I...

Elisa Cooper: So I think that might be the intention.

Anjali Hansen: Maybe they need to clarify that, like, it should say unilaterally or something after that.

Steve DelBianco: In the actual RAA posted for (unintelligible), you recall, one of their most controversial parts was the way in which ICANN's board could make a unilateral amendment.

So I'm going to read to you what it says on Page 27 of the RAA. It says, "If the ICANN board determines that an amendment to the agreement, including the specifications referred to, unless such specifications expressly do not permit amendment," they go through a special (limited) process. So this statement means it may not be amended even by the special amendment process. They locked this out.

Elisa Cooper: Well, just before that, though, it says that the terms of this specification provide - can be extended provided that the - that ICANN and the working group mutually agree to extend it. So I think it's just saying that basically neither ICANN or the registrar on their own can make these - any amendments but the working group and ICANN can agree to extend the term of this specification.

Steve DelBianco: Right. Extending the term only affects the time. It doesn't affect the requirements. It doesn't affect the requirements. And what I just read you from Section 6.1 in the agreement is that they have locked this down and it isn't even subject to the special circumstances of the board amendment.

Elisa Cooper: Okay, I'm sorry. I misread that.

Steve DelBianco: Okay, because the (term alone) is not really affecting the element.

Elisa Cooper: Got it.

Steve DelBianco: So we should question - I think we should definitely challenge why and we don't agree that this spec, which is new, should be locked down and be immune from the special amendment process described in Section 6 of the RAA.

Anjali Hansen: Okay. I'll put that in the comments.

(Ron): (Steve), this is (Ron). I had my hand up. Just - I wanted to comment on this working group, if I may.

Steve DelBianco: Go ahead, (Ron).

(Ron): Thank you. The - I'm not sure exactly where it is that it's been brought up recently that the working group, this famous working group, is in fact, a body that's constituted by the registrars and they will include any others that the registrars deem that they may like to invite to join that working group.

So it's not a working group. It's the working group, so be very careful about the terminology. The working group is basically registrars sitting around a table and making a determination without any other member of the community present.

And that's a very (dodgy) thing to begin with, to talk about a slippery slope. So it's interesting that this is an area that cannot be changed unless the

working group decides to change it and who is the working group? It's none of us.

((Crosstalk))

Steve DelBianco: All right, but (Ron), this document can't even be changed by the working group. All the working group can do, is extend the time but it cannot change this two-page spec. So you made - that point's not accurate but I love your first point which is should the BC comment on the nature of the working group that explicitly excludes members of the community like the BC? Is that a point you'd like us to consider?

(Ron): Absolutely.

Steve DelBianco: All members of the community, not just BC. Everybody's locked out.

(Ron): Thank you.

Steve DelBianco: All right.

Elisa Cooper: This is Elisa. Let me just - can I get in the queue?

Steve DelBianco: Please, go ahead, Elisa.

Elisa Cooper: I think you all know that (Mark Monitor) is a register and I work for (Mark Monitor). The only thing I would say is, remember, this is a contract between ICANN and the registrars, so I think we just need to remember, of course, they're going to have to be the ones that are negotiating this contract, the terms of the contract with ICANN.

And ICANN is supposed to be working in the public interest, so I'm just putting that out there. That it's - obviously it would be a little odd to have another party negotiating a contract that they're actually not party to.

((Crosstalk))

Steve DelBianco: Ron, your hand is still up.

(Ron): Thank you. I just got pushed back, Elisa. The parties of the contract is the user. It's the person who buys the domain name and the registrar is just passing this part (this) through so there's a very important element here that we cannot gloss over and say sorry, we're not part of that contract. The whole community is part of that contract. There's no question about it.

That's what keeps ICANN accountable. Everyone on the community has a right to raise their voice and bring it forward on any issue and so to have a contract that's done between - you're seeing it as two parties, that's not the way ICANN works.

ICANN's not an animal like a corporation, any other standard corporation of contracted parties and non-contracted parties. Unfortunately, it sounds like some crazy terminology but we all are a part of this contract so really I can't accept what you just said there.

Elisa Cooper: Okay, well, just to clarify, the only parties that are signing this contract are ICANN and the registrars.

(Ron): That's fine. I'll agree that they - but that's the two signatories but that's not who - that's not necessarily who's negotiating this contract. Everybody should

be involved in this contract because the end user ultimately is the one who we're trying to serve here.

Elisa Cooper: Right, and I'm not saying that the community shouldn't have input. I'm just saying at the end of the day, there're two parties that have to sign this contract and have to abide by this contract.

(Ron): I'm not arguing that point. I just want to make sure that everybody's voice is heard. Thank you.

Steve DelBianco: (Ron), I would encourage you to articulate the exclusive - you're concerned about the exclusive nature of the working group And if you're able to draft that for us in the next couple of days, we'll add that as a potential concern for our members to approve. How about that?

(Ron): I'll look into that (Steve). Yes.

Steve DelBianco: Thank you. Anjali?

Anjali Hansen: Yes, I just wanted to weigh in on that. I mean, I have to look more carefully at the agreement to see exactly what the parameters are of the working group. I apologize. I haven't done that at this point. But I would like to investigate if the working group is going to be able to amend this contract and then there won't be further opportunity by these stakeholders to comment, that's a problem

But if it's simply to propose amendments, and then everyone can comment on them, that would be more acceptable. So I'm going to look into that unless somebody can answer that for me right now.

Steve DelBianco: All right, but without details, it's premature to do that now but as a general matter, okay.

Anjali Hansen: Yes, I'm just going to - yes.

Steve DelBianco: All right, and (Ron) will help articulate his rationale, why he believes the working group should not be exclusive. Others may differ and that's what Elisa's point was, so we'll have to wait until we have some text that we can debate. I have Susan Kawaguchi's in the queue.

Susan Kawaguchi: Sorry I'm late to the call. I was on another call earlier that went long and I'm not sure whether there's been a discussion of the actual, you know, elements to this - the privacy and proxy specifications. But they've made substantial changes to this since the version that I reviewed at the ICANN meeting in China.

And I'm really concerned with this because - so I think Elisa mentioned that we're going to have to live with this for - until 2017. And I guess - and so maybe you can give me, since I have not read all this and followed like you have, (Steve) - so this is what the working group is going to work on, this specification? Or this specification is what a proxy service provider would have to put in place until 2017 when...

Steve DelBianco: It's the latter. It's the latter. There is no ability for anyone to change this two-page spec. All that the working group can do is to extend the time to which this spec remains in effect if we, at ICANN, have been unable to create a new privacy proxy accreditation process.

So prior to you joining the call, we are very concerned that this particular spec is locked down forever. It is immune from the special amendment process the

board has worked out with the registrars in Section 6 of the RAA. Nobody can ever change this spec.

So we have one bite of this apple and it may not even be adequate. I think we want to object to the statement that this spec may never be modified by ICANN or a registrar.

Susan Kawaguchi: Yes, I would agree with that but I'm also - I'm not comfortable with what they've outlined here. In the previous specifications, there was, you know, at least a little bit of (keys) on, you know, how long it would take to relay information or relay a communication.

And it looks now that the registrars or the proxy providers are - will have to provide information on their site on how they will do this but it doesn't tell them how...

Steve DelBianco: No, they don't nec- they don't - there's no requirement in here for the privacy proxy to describe how they do anything. They only have to tell you the circumstances under which they would relay and reveal but not on how they'll do it or how long. Susan, is it possible that they moved the timeframe of seven days, that they moved it out of the spec and moved it into the RAA where it is subject to special amendments by the board?

Susan Kawaguchi: Okay and...

Steve DelBianco: And this may have been done for our benefit.

Susan Kawaguchi: Well, let me read that RAA and I confessed I have not done that but I'm really concerned with this.

Steve DelBianco: It's Section 6.

Susan Kawaguchi: Because I do not think we can live with the proxy situation for the next four years. We hope that something might change so I'll put something together and send it your way. I mean...

Steve DelBianco: Susan, in Beijing, Samantha Eisner was very forthcoming with the BC about areas where negotiations were heading, areas where she thought public comment would be helpful. And you know (Samantha). Is it possible for you to do a direct inquiry to her and ask her about why the spec was trimmed down? Did they do it for our benefit? Why does the spec lock down where it can never be amended by anyone?

And those answers will go a long way because at this point, we can't just ask questions of ICANN. This is the final public comment before this agreement gets locked out. So it doesn't do us any good to ask questions. We have to actually demand or set - until the request changes at this point, there won't be another bite of the apple.

Susan Kawaguchi: Okay. No, that's a good idea and I will do that.

Steve DelBianco: Great. Anjali, I see your hand is still up.

Anjali Hansen: Yes, I put it up again. So Susan, I know you were the point person I needed to speak to. I'm drafting the comments for the RAA and for the BC and right now what we have on the specs, the proxy, the privacy proxy specifications and terms is that there are no specific requirements, just that they state what their process is but there - it doesn't - ICANN doesn't require them to follow any specific requirements.

So if you have anything there that you think needs to be input, to be about the requirements, let me know. And then also, the other comment on this is that there was going to - there's no amendment process, so those right now are pretty broad comments, so any specificity you can provide when you send them to (Steve), just copy me, too.

Steve DelBianco: And Chis Chaplow's idea that there be a requirement for acknowledgement confirmation to the complainant...

((Crosstalk))

Anjali Hansen: Exactly. That's right. I'm sorry, I missed that.

Steve DelBianco: Got it. And if there're no further comments, let's move to the next element on the outline. It's WHOIS. So under WHOIS, we have at least three or four sub-points. Samantha Eisner told us in Beijing that if we wanted to retain bulk access to WHOIS, Part 43, we had better start screaming about it now because she claims that is on the way out.

Bill Smith of PayPal sent an email to all of you just last week complaining about this as well. But I need somebody who has more experience on this to indicate whether Port 43 access is something the BC wants to exist - be retained.

Take a queue on that. Start with - I think Elisa's hand is up. Anjali, your hand is still up, do you mean that?

Anjali Hansen: I'm going to take it off I...

Steve DelBianco: All right. Go ahead, Elisa.

Elisa Cooper: Yeah, so I think - okay so there are two things in this contract related to WHOIS. So essentially this contract says that the registrars will not have to provide bulk access to thick registries. And I personally actually think that's fine because the thick registries have to provide Port 43 as a requirement because they are now - for new gTLDs - they are going to have to be the thick registries.

So providing - requiring the registrar and the registry to both provide thick WHOIS for the same data is duplicative. I don't personally - again in all transparency I work for a registrar. I don't think it's necessary to have the registrar providing the access if the registry is already providing the access.

The second thing that's in this agreement that people are talking about is the fact that they're essentially getting rid of this access to bulk WHOIS which basically this is - we actually have asked around and the registrar has actually asked around.

Every registry is required to sell their WHOIS for \$10,000 in bulk. But nobody - well at least among the registrars - none of them is selling their WHOIS record for \$10,000; none of them said that they were selling it.

In this contract they're basically making it much harder for that information to be sold as a requirement but nobody is purchasing it or using it today. So those are two different things; one is to do with access to Port 43. And for those who don't know what Port 43 is it's essentially a method by which you can get access to full contact information.

Registries have to provide it as part - new gTLD registries have to provide thick information. And to back up thick information means all of the

information in a WHOIS record. It means the registrant, the technical contact, the admin contact and all of the contact information, address, email, phone, etcetera. All of that information must be captured now by the registry for new gTLD registries.

Today VeriSign is what you call a thin registry and they only collect essentially the domain and the name servers and the registrars collect the rest of the information for DotCom and Net which is run by VeriSign. But in - with new gTLDs the registries have to collect all of that information.

And...

((Crosstalk))

Steve DelBianco: The registries don't have to collect it but they have to maintain it. It's still the registrars that collect it.

Elisa Cooper: Registrars collect it but the - well, right, registrars have to collect it because that's the point of contact with the registrant...

Steve DelBianco: Right.

Elisa Cooper: ...not the registry. But at any rate...

Steve DelBianco: And, Elisa...

((Crosstalk))

Steve DelBianco: Elisa, to your point I pasted into the chat, Elisa, 3.31 of the Registrar Agreement addresses your point about the DotCom DotNet thin registries.

The RAA doesn't - it requires registrars that are servicing Com and Net to still maintain thick WHOIS for those registrations.

Elisa Cooper: Right but not for the new gTLDs which...

Steve DelBianco: That's right.

Elisa Cooper: ...are all thick registries and will be providing thick WHOIS - will basically be storing and making available at the thick WHOIS via Port 43. I know that...

((Crosstalk))

Elisa Cooper: ...complicated.

Steve DelBianco: No but I think it makes a compelling argument that we ought not be too concerned with the 43 because of the registry access. Zahid, you're in the queue.

Zahid Jamil: Thanks. I thought I'd take the opportunity - I know we're talking about - Elisa mentioned verification. And one of the issues I saw in the agreement, and it's been mentioned by others as well that (unintelligible). I'm sorry? Sorry - even by law enforcement was that the verification aspect the registrars are only supposed to verify either the email address or the telephone number.

Now if you see the requirement that exists for verifying the telephone number, the SMS and all of that, they're just not going to do it. And they'll just go and only verify the email address so basically S Roman 1 becomes the default because there's either, one, verify the email address or the phone number. They just won't do the second one.

And so one of the things that people were asking for and even law enforcement work that maybe we need to sort of bump up this verification process to make sure that they verify both the phone as well as the email; that being one point.

And secondly, there should be an ongoing affirmative obligation for registrars to re-verify data because at the moment they only do it upon actual notice of changes. Thanks. That's it.

Bill Smith: This is Bill Smith.

Steve DelBianco: Anjali.

Anjali Hansen: Yes, Elisa, I think I kind of lost you on your last comment. So is - what's the bottom line of how we should comment on that? You don't...

((Crosstalk))

Steve DelBianco: Too soon. Too soon. Don't know yet. Don't know yet. Let's finish the queue and the discussion...

Anjali Hansen: Okay. Okay.

Steve DelBianco: ...on Port 43. Is there anyone else who believes the BC should insist on registrars also maintaining Port 43 even for thick registries? I don't think we're going to have that one in here because it looks as if Port 43 is still active for thin registries; that's a requirement of the RAA.

And what about those of you who use Port 43? Is it going to be more work for you to sometimes query the registries and sometimes query the registrars as

just a fact of life because until Com and Net move to thick there have to be two places to go.

Elisa Cooper: I think - this is Elisa, if I could get in the queue. I think that probably most businesses just use Web-based WHOIS lookups. Like they go to a registrar's Website and do the lookup.

((Crosstalk))

Steve DelBianco: Any other comments on this? All right, let's move on to the next bullet here under WHOIS. The next bullet under WHOIS wonders whether the BC should comment in support of or asking for more clarity on the basis to suspend a registration based on the willful provision of inaccurate or unreliable WHOIS.

It's in the Registrar Accreditation Agreement under 3772. Give you guys a minute to get there. Three seven seven two is on page 13 again. Go ahead, Elisa.

Elisa Cooper: Yeah, just real quickly. I just felt that this could be stronger. That if there was a willful provision of inaccurate data that it should be - it should result in suspension; it shouldn't just be a basis. I thought it should just be stronger that the name should definitely be suspended if the name has, you know, if there's inaccurate or unreliable information.

Steve DelBianco: All right. So let me ask those - the lawyers on this call. When it says that it's a material breach - I pasted in the actual text of 3772 - it's in the chat. It says that willful provision is a material breach and be a basis for suspension or cancellation. Does the words, "material breach" and "basis for suspension" compel them to suspend or just give them an excuse to suspend?

I think Elisa's point is a basis to suspend does not create the obligation to suspend. Is that right, Elisa?

Elisa Cooper: Right.

Bill Smith: Steve, this is Bill Smith.

Steve DelBianco: Thanks, Bill. Go ahead.

Bill Smith: Yeah, while not a lawyer this - I don't believe this compels them and I believe virtually every registrar will use a couple of things to avoid doing that. One is the fact that they are not compelled and the second thing is there's no definition of willful.

And those that are most egregious with respect to criminal activity will never use this. So we aren't going to address the real issues here. And I believe that's true of the general agreement on WHOIS verification, validation, whatever, all this information they get 15 days to do it. You know...

Steve DelBianco: All right, we're going to cover that one next. We're going to cover that one next. So Bill makes a great point that there's no definition of willful and unless somebody else has the wisdom the BC will say that a basis to suspend is permissive but it does require the suspension and that the BC would respectfully ask that they change this to be as - to require suspension. You can signify by checkmarks or a comment on this at this point.

Okay so, Anjali, you got it? So this one will be require suspend. And, Bill Smith, were you on the line when we discussed Port 43?

Bill Smith: I came on in the middle of that.

Steve DelBianco: Well, you were one of the people who was very concerned about that but the Registrar Accreditation Agreement still requires Port 43 for any thin registry. And of course all the thick registries have to maintain Port 43. So unless you have some compelling reason to keep that we are not going to make that complaint.

Bill Smith: No, I don't - I don't believe there is. I have other issues with the WHOIS data, the format and other things but...

Steve DelBianco: Okay.

((Crosstalk))

Steve DelBianco: All right, folks, so we are going to go with the - thank you, Bill - we are going to go with Number 2 there, to require the (posted) as basis for. Moving right along the next one - and, Bill Smith, I'll put you in the queue I know because you have a concern about the 15 day.

What we're discussing here is the fact that in 15 days if they can't validate a brand new registrant's data the question is what happens next? Should the registrations be suspended during the period of so-called manual validation? Because that first 15 days validations are done by email or I believe phone calls.

So, Elisa, I know you articulated this in an earlier email; would you give us the rundown of what you think the BC's comment ought to be on this point?

Elisa Cooper: So the way it's written to me is a very slippery slope. And I read it like well while you're doing - you can continually sort of manually try to validate the

information during that sort of manual validation well you can just not suspend the names because of the way it's worded and basically because of where our comment is located it reads to me like essentially you can just keep trying to manually validate it but not do anything.

And so I propose that while this manual validation is going on - and what that manual validation is like I don't even know. Of course that's not defined or described anywhere really - that the name should be suspended. They also give the option of suspension or being placed on hold which doesn't do you any good. It's really - the name should really be suspended meaning the name should no longer resolve. That's what I would think.

Bill Smith: Steve, this is Bill.

Steve DelBianco: Go ahead, Bill.

Bill Smith: Yeah, I mean, I would be in favor of a provision that - or making it that they must contact, you know, whether it's through the email or phone or both prior, you know, on a new registration prior to delegating the name into the DNS.

And to the complaints from the community that that's just infeasible I just registered a name and I received probably four or five phone calls from the registrar attempting to sell me extra services. So they're able to contact me very quickly for things they want to do. It's obvious they don't want to do this.

And, you know, I'm a brand new customer of the registrar in question - I won't name them - but...

Elisa Cooper: It's not us.

Bill Smith: No, it was not you. But they were able to, you know, I did this as an individual. And, you know, they can reach out and touch someone very quickly if they choose to.

And the 15 days is an insane requirement. In my opinion if this is going to be effective, the verification process, they need to do it at the time the change is made and - or when a new name is registered. Otherwise they might as well rip out all this language in my opinion. It just adds bulk and does nothing.

Steve DelBianco: Zahid.

Zahid Jamil: Yeah, I'm just going to go back to my earlier point - and maybe it would have been more appropriate at this stage. But my question is - we're talking about sort of, you know, (what) would be suspended within the 15 days if it's not validated, I understand that.

But what if - what is the definition of validating and verification here? It's either that you send an email and you're supposed to get an affirmative response or you call them up by telephone. And as I said earlier they're never - I mean, they're not going to call by telephone even though they can, as Bill just described it, what they'll do to comply with this requirement is just simply send an email.

And so my question really is is that sufficient for us as user? Do we feel comfortable that the only verification that registrars will do or they have to do is just send an email and wait for a response? Is that bar sufficient for us?

Steve DelBianco: Zahid, speaking for myself in the Internet era, the last thing I want is a phone call so I would think that we (wouldn't) want to require the phone call and that's just my personal opinion.

((Crosstalk))

Bill Smith: I'm there as well. I think having multiple points of - multiple ways to contact should be required.

Steve DelBianco: Meaning you have to do them all?

Bill Smith: Do both. If you need an email to get an affirmative response and you need to get an affirmative response on the phone otherwise the contact...

((Crosstalk))

Bill Smith: ...information is useless.

Steve DelBianco: So that's Bill and Zahid that feel that we ought to require both. Anyone else feel the same way? See some hands up or checkmarks, whatever you want to do. I have a checkmark from Ron Andruff.

Susan Kawaguchi: This is Susan. I can't seem to get back into Adobe. But, yes, I believe we should require both.

Steve DelBianco: Okay. So we have...

((Crosstalk))

Steve DelBianco: ...five BC members who feel strongly about both. So, Anjali, put that into the draft please.

Bill Smith: And, Steve, I think, you know, some of the arguments, as an example, I'll use Facebook as an example, right.

Elisa Cooper: There you go.

Bill Smith: Facebook registers a number of names, right. They're a customer of some registrar. If there is a registration coming in from Facebook and they use the same contact information I don't think there's any reason that the registrar should have to verify that. It's known to work potentially.

Or if, you know, so we don't have to have phones ringing off the hook; we just need to know that these things work. Maybe that's not sufficient but, you know, the complaints we hear from registrars about how hard this is to do are just - are mindboggling to me. There is a thing called Know Your Customer.

Susan Kawaguchi: And this is Susan.

Steve DelBianco: Elisa or Susan and then Elisa.

Susan Kawaguchi: If you don't mind me just interjecting. So the way Facebook uses phone numbers, though, for their own users you can set up your security on your account. So if I log into Facebook from a device that I haven't logged in from previously then I immediately get a text with - to my phone with a code that I use as my - in addition to my password.

So in that way, I mean, these things are being used, they're not - you're not getting a phone call where a person is talking to you but you have to have the availability of the phone and be able to, you know, respond online with that information texted to you.

I think that is a decent way of doing things. It verifies the email and the - if you've already verified the email then verifying the phone isn't that big of a deal. Text them the code, have them enter it so it, you know...

((Crosstalk))

Steve DelBianco: The BC believes that - the BC believes that it's not just the existence of the email and the existence of the phone number but that a reply is required...

Susan Kawaguchi: Right.

Steve DelBianco: ...via both the email and phone so reply by phone and email. All right we have at least five or six BC members that feel strongly about it, nobody against it, so it looks like that one, Anjali, is in the draft. Are there any other comments on the phone and email validation?

Elisa Cooper: Yeah, I think also...

((Crosstalk))

Steve DelBianco: Go ahead.

Elisa Cooper: Before we move on I think we should also take a vote on Bill's idea about having this validated before the name is delegated because I think that's an important thing. That's something that law enforcement was asking for. And I think that's an important point and we should take a quick vote on that.

Steve DelBianco: So, Elisa, in the current scheme when I register a name the delegation is active immediately even though it's pending validation, is that correct?

Elisa Cooper: Right. So if the name is live then they've go 15 days to validate it. What Bill was suggesting was well the name doesn't actually go live until the validation occurs which is not what is in the RAA.

Steve DelBianco: All right. Do - what's the argument to say that a registrant can't - can't resolve until they have been validated?

Bill Smith: Well the registrars will say it's too hard; the registrant is coming in from some, you know, unusual place. They can't respond to the, you know, they're doing it while they're on the road; all these, you know, these issues. And I think our response should be yes, we recognize that.

But domain names, you know, domain names are abused. And the number of cases where people are not available to respond I suspect is relatively small except in the cases where it's for criminal activity. So, you know, the - basically taking 15 days to verify someone, you know, and attempt to nip criminal activity in the bud just doesn't do anything.

Steve DelBianco: I'll post this accuracy specification link in the chat window. For those of you who want to pop up the accuracy specification check the chat window. And I see Elisa and Zahid both with hands up. Elisa.

Elisa Cooper: Zahid should go.

Steve DelBianco: Zahid.

Zahid Jamil: Thanks. I mean, this is, in a sense, repeating what Bill was saying and tying that in. Basically a malicious registrant has 15 days to use his domain name, never have any validation done and then skip over to another domain name and continue to do that.

It's even giving you more time than fast flux. So I think that, you know, I agree with Bill's (comment), verification should be done before the domain goes live.

Steve DelBianco: Zahid, I would ask that you could draft - you're an expert on the fast flux issue under registration abuse policy. Would you be able to dig up a couple of paragraphs on fast flux and the speed with which you can perpetrate fraud on uses of the Internet that way so that Anjali can fold that in and explaining why we think that this should not resolve until verified.

Are there any objections from BC members - objections to the BC trying to request that they not resolve until verified? Any objections to that? Okay so that one is in there as well, Anjali.

There's only one more point on WHOIS. Let's see if we can get through all this. Under WHOIS the accuracy requirements in the link that I just put in to the chat that link is only on the registrant data, not on the account holder. So one BC member proposed that the BC require that validation occur not just of the registrant but also the account holder. So what do the BC members feel about that? Should we ask for both to be verified?

One from Elisa. Anyone else feel strongly one way or the other?

Bill Smith: Steve, this is Bill Smith. I think it's - I think it's a good thing. I also have to say that in that section of the agreement it was extremely difficult for me to understand what was required of registrars in terms of validating the name holder versus the account payer and it's...

((Crosstalk))

Steve DelBianco: I understand that. Bill, we are past the point of being able to go back to ICANN and say hey this isn't clear; could you answer questions? We only have one last bite at this apple so we have to tell them what we want them to change and we have small hope of getting it. But just saying it's unclear isn't really constituting a meaningful comment.

Bill Smith: Sorry, I think it is the most meaningful comment. This document is inscrutable. And I believe we should say that. This is a...

((Crosstalk))

Steve DelBianco: To what end? To what end asking them to make it (scrutable) and do over?

Bill Smith: To tell ICANN they need to do a better job.

Steve DelBianco: Okay.

Bill Smith: This could be with us for decades, this agreement. And I cannot - I cannot understand how it works.

Steve DelBianco: And, Bill, you do know how ICANN works and for the BC to file a comment that says we cannot understand the RAA so it should not be approved until the document is made more understandable, you feel that that is a meaningful powerful comment for the BC to make?

Bill Smith: I believe it is. I'm also okay if the BC doesn't make it.

Steve DelBianco: You know what, we all agree with you it's just a comment that's going to motivate any action, that's all.

Bill Smith: I understand but at some point we have to tell the emperor he has no clothes.

Steve DelBianco: Okay. Then, Anjali, I would ask you to note in the draft - Anjali, note right up front that the BC is - raises some serious concerns about the understandability of this document for those who will rely on it to know that they have a safe place to register names and use the Internet. And if Bill...

((Crosstalk))

Steve DelBianco: ...Bill's email - go ahead.

Bill Smith: I think that's a much better way to phrase it coming from the BC. I'm happy to be more blunt but I think that's a good way; we have serious concerns with the understandability or something like that.

Steve DelBianco: All right, Bill, Elisa and Susan had all indicated a yes on account holder as well. And I only had one final issue on the outline, if you scroll to the next page, Benedetta, we can wrap this up.

There's a new document called the Registrant Rights and Responsibilities. And Samantha Eisner told us in Beijing that this document was motivated by something that Fadi wanted. And it was written by the registrars, one page long.

And there's one particular right in there, a registrant right, that a number of us have experienced, well, we've experienced having that right violated in the past. And we're wondering whether we need some way of clarifying that ICANN must enforce it.

So that right is on the screen in front of you. For those on the phone I'll quickly read it. It says, you, the registrant, "You shall not be subject to false advertising or deceptive practices by your registrar or through any privacy or proxy services made available by your registrar. This includes deceptive notices, hidden fees and any practices that are illegal under the consumer protection law of your residence." So they clarify the law.

So a registrant would read that and say hey that makes sense, I like that as a right. In the RAA, in 3.7.10, here's the enforcement law. It says that, "The registrar shall take - shall not take any action inconsistent with the corresponding provisions of the agreement or applicable law."

The question is does that mean that any violation of the responsibilities agreement are counted or not? Because 3.7.10 doesn't reference the specification in the second half of the sentence. Those of you who see it on the Adobe it's a little easier to understand where this concern comes from.

Because the obligation says that the registrar has to put on their Website a link to the rights and responsibilities specification. And then it goes on to say, "And shall not take any action inconsistent with the provisions of the agreement."

Do the BC members agree that ought to say, "Any action inconsistent with the corresponding provisions of the rights and responsibilities specification."
Should we name it there?

Bill Smith: Steve, this is Bill Smith. Is the...

Steve DelBianco: Go ahead.

Bill Smith: ...the registrant's rights and responsibilities document mentioned from the agreement or not?

Steve DelBianco: We're going to check that real quick. Phil Corwin is agreeing we ought to reference it. So let's say it ought to be referenced directly if it's not already incorporated by reference. What about that as a BC position to get this call wound up?

That we want to make sure that ICANN can enforce against failures to honor the rights in the agreement and specifically this one and either it has to be incorporated by reference in the agreement or we should change 3.7.10 to specifically refer to the RRR. Good?

Chris Chaplow: Steve, Chris here.

Steve DelBianco: Chris Chaplow, go ahead.

Chris Chaplow: To be honest that registrant rights and responsibilities document, you know, it's so weak it's not really worth anything. You read through that and you say well of course, of course, of course, because the actual contract that the registrant has with the registrar is under local law is not really ICANN - ICANN has very little remit on this. In the case I've just been involved with underlines that and made me fully realize that.

Now I think I've resolved that particular case. And I think my cynical answer would be, you know, it doesn't really matter either way. That document is just - it's just a show document I think unless we can build on it in the years to come to make it something that is worth having. Thanks.

Bill Smith: This is Bill Smith...

Steve DelBianco: Chris.

Bill Smith: I agree.

Steve DelBianco: You agree with that?

Bill Smith: Yeah.

Steve DelBianco: Okay.

((Crosstalk))

Bill Smith: ...in here. The only one that has any teeth at all is Number 3, I would say. And that's provided by consumer protection laws in most every country on the planet. So we aren't getting anything, right. We're allowed to know the identity of our registrar. Wow, that's amazing. You know, that's right up there with, you know, the UN declaration on human rights in terms of the things I get.

Steve DelBianco: Yeah, I just checked the underlying RAA and I have to say that the underlying RAA does not, in any other place, require full compliance with the rights and responsibilities. So I believe that there's probably a typo in 3.7.10 because 3.7.10 creates no obligations other than to post the RAA - the RRR - it doesn't require an obligation to fulfill those rights.

So the only way this has any teeth is if they change 3.7.10. It says, "Where corresponding provisions of this agreement," - this is for you, Anjali - it should say, "The corresponding rights in the RRR," so that at least, you know, to Chris Chaplow's point, that if his right was not honored by a registrar he not

only has action at local law but he goes to ICANN and says this registrar has violated their agreement because they didn't uphold the right.

Yeah, good luck getting ICANN to de-accredit the registrar but at least you have a contractual basis to make that claim.

Anjali Hansen: Okay.

Steve DelBianco: Elisa, I see you in the queue.

Anjali Hansen: I think she - did she leave?

Steve DelBianco: Okay. Okay. We actually made it all the way through. Thanks for indulging the extra 10 minutes. Are there any other comments or BC members who feel we ought to do another call on this?

Anjali Hansen: This is - oh.

Bill Smith: This is - this is Bill. I have a question on - did we discuss the working group?

Steve DelBianco: Yes we did.

((Crosstalk))

Steve DelBianco: And we are going to complain...

Bill Smith: ...I was on a WTPF call with the US government...

Steve DelBianco: We're going to complain that the exclusivity of the working group is a grave concern to the Business Constituency. Ron Andruff raised that point and echoed some of the comments I've seen you make, okay?

Bill Smith: All right, thanks.

Steve DelBianco: All right. Anjali, I think you know what you've got to do in terms of trying to work up a draft. Elisa and I will do a pass on editing and get it into the hands of our members in the next few days I hope.

Anjali Hansen: Yes, that's my plan. I'm going to write this up. Thank you, everyone, for your specific comments. That's helpful to me. I will write this up and then I'll give it to you and Elisa and then you can circulate it. And then if we need another call we can do that; if everyone just doesn't have that many comments then you can go with that.

Steve DelBianco: Okay. And, Benedetta - thanks, Anjali. And, Benedetta, would you be able to get the transcript into Anjali's hands right away? And when you finish compiling the notes - the minutes that you take circulate those of course to everyone.

Benedetta Rossi: Yes, of course. I should receive the transcript probably tomorrow morning US time.

Steve DelBianco: Great. Thank you. Thanks, everyone. And appreciate the two days in a row of Business calls. Thanks.

Anjali Hansen: Bye.

Benedetta Rossi: Thank you ever so much, (Kelly). You can now stop the recording.

Coordinator: Thank you.

Benedetta Rossi: Have a...

END