

AMY BIVINS:

Okay hi everyone, this is Amy, we'll go ahead and get started. Good morning, good afternoon, and good evening. Welcome to the Privacy and Proxy Services Accreditation IRT Call on September 6th, 2018. I'd like to remind you that this call is being recorded. Please state your name before speaking for the recording and transcript, and please keep your phones and microphones on mute when not speaking to avoid background noise.

I'm Amy Bivins from ICANN Org. Thanks everyone for your participation on the list this week. I think we've made a lot of progress in discussing the edit to the contract and we'll get to that in just a moment, but first we want to address and hopefully resolve the recent discussions about the possibility of referring matters to the GNSO council. This has come up several times recently and it's time to determine whether or not we have consistency to go back to the council on anything, otherwise we need to move on and finalize the materials so that we can proceed to public comment. We think if we are not taking anything back to the council we could potentially be ready to go to public comment as soon as the last week of September.

We're hopeful that if we're not taking anything to the council we can go ahead and move along, because we did have a bit of a break earlier this year for several months so we'd like to move ahead. So to facilitate this process yesterday I distributed a poll to the group asking if you believe there are policy issues that need to be taken to the council. I just checked the poll a minute ago and ten IRT members have participated. We're hopeful that we get as many of you to participate in the poll as

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we can. We're asking you to please participate no later than the end of your day tomorrow. As of this morning of the ten IRT members who participated nine recommended that we escalate -- refer questions back to the council, but please note that we will be looking at the make-up of the responses in the affiliations of the people who are responding to the poll. For example if there are nine, or if there's a significant number leaning one way, we would take into account the various constituencies.

So for example if there was one constituency that wanted to take things to the council but the other constituencies didn't even if you were members, we would take that into account. It's not strictly just numbers for the poll. So again, please complete the poll and also we want to open this up for discussion now. I think many of you but not all of you participated in the poll, maybe you want to talk through some issues first. So please if you have comments on this, or questions, or want to talk through this, please get in the queue. Susan's hand is raised so we can go ahead and start with Susan. You can go ahead.

SUSAN KAWAGUCHI:

Thanks Amy. And I apologize I have not been on top of all the e-mail threads on the TTIRT, so I was a little mystified at this. I responded, I was the one that said, "No don't go back to the council". I just don't even imagine what are the issues, that you would go back to the council for. I noticed one e-mail referenced the RDF review teams report with some comments we made there, but I helped draft that report so I'm on the team.

I don't see there is any reason to -- from what's in the report, to send it back to council, and I just don't -- And obviously I'm also on council, so I just don't know what would be -- what issues we would be sending back and what kind of results you would expect. The council in the past has weighed in on public comments, so we -- that's something we could -- the council may do with this review team report. I don't know, but we're going to discuss that. But I'm sort of mystified and I don't know what you would expect of council at this point.

My thought is we've been -- this has been delayed for a long time and we're so close to getting something done here that we should continue on. TTPR is going to assess this but we're not going to know for another year how that's going affect the Privacy Property and we still need that process in place, because what's happening now is you can't get the information, some -- the temp spec in the WHOIS, you can't get the WHOIS information.

The Temp Spec does require that privacy property data be labelled that way as privacy property, but that's not what's happening and it's very hard to tell whether or not a record is redacted by -- through the GDPR or if it's a privacy proxy service. Literally I've had to ask that question, and I've gotten a variety of responses on that. So then you assert your rights in GDPR for the information legitimate purposes, and then they go, "Oh it's a privacy proxy and there's no rule for that". So I think we just need to move forward and no more delays.

AMY BIVINS:

Thank you Susan for that, and we have a couple of other folks in the queue. Before I defer to Theo and Steve, I just want to clarify briefly, the reference to the RDS, the WHOIS2 report, I'll apologize for that because I clearly created some confusion among members of the IRT and that was poor e-mail drafting on my part.

If I had proofread I would've seen there seems to be a connection between that report and the poll about specifically going back to the council, and that was not the case, there was more just background information by the way this project was referenced, and this projects timeline was referenced in this report, not that there was anything in the report that would indicate whether or not anything should be taken to the council. So that was a proofreading problem on my part, but I did think that the group would be interested in seeing that report.

But that aside to clarify for those who have not been on the calls recently, or have not been on the meeting recently and haven't been able to keep up with the wiz, the issues that have come up recently are related to GDPR and Suzan you mentioned those issues, and I think various members of the IRT have raised questions about how this group works, and that the proposal requirements would be impacted by GDPR, which has led some of the IRT to suggest that we should ask the council how we should be proceeding at this stage given that we know that there's an expedited PTP going on that might impact what is proposed here.

There was also a recommendation on the list from Peter Roman about adding up until edit to the accreditation agreement that would affect how privacy proxy services could be applied to WHOIS information or

RDDS information that may already be masked in agated WHOIS environment, and we've had some feedback and questions around that. At least initially that doesn't appear to be within our scope, but those were the issues that have been raised just to give you a sense of the discussion we've had that have led to this.

So at this point, because the possibility of going back to the council has been raised several times and keeps coming up, we just want to poll the group, figure out whether this a serious issue that the IRT really believes that we need to go back to the council at this point or not, and if not we need to go ahead and move ahead. So that's how we got to this point. I hope that helps, but if you have further questions about where this came from please feel free to ask them. I don't know if you have further comments, I expect we'll have a fair amount of discussion on this today. Theo you're next in the queue, we can go to you.

THEO GEURTS:

Thank you Amy, and thank you for clarifying that for Suzan. I guess it was sort of mystifying when the RDS review report came up, and to circle back to what Suzan said earlier on, I think that is the crux of the issue. I mean we got redacted for privacy, we've got registers are now providing privacy services for free, it is all not very consistent what is going on. We are talking about, in my opinion, that we are going outside of scope of what the working group ever anticipated due to the current situation, and I think most of us are struggling with that.

And the question of going back to the GNSO, a) I don't think we should be afraid to go back to the GNSO, but we need to sort of be careful on

how we do that and how useful is that. I mean I remember Steve Metalitz and I back in the WHOIS IRT regarding the WHOIS migration for Temp Registries to take. I mean we sent a letter back to the GNSO and that was flagged as a yellow warning or something, and no action was taken by the GNSO so we went through this exercise and we got nowhere with it. We didn't get a clarity, and we all know what the current status is on that IRT or that policy actually. I mean the policy is out, but with zero programs in it.

So I think before going to the GNSO I think we need to have a clear path mission and goal what we want to get out of it, and if that is [inaudible] then I don't expect that we're going to get very clear answers from the GNSO. But I think one of the questions could be, are we still within scope? I mean the landscape has completely changed and there is very little consistency going on in the DNS when it comes to privacy proxy, and we're redacted for privacy I would agree there with Suzan. So with that I'm going to hand it over to you Amy. Thanks.

AMY BIVINS:

Thank you Theo, and I will differ to Steve in just a second. I will say that I think that you're right, that were the IRT to refer anything to the council we would need to have a clearer question of what exactly it is that we're referring to the council, as opposed to just asking them some open ended questions about that in light of the GDPR or something similar to that. I think if there were IRT members that wanted to take something to the council as some IRT members have mentioned on the list and on calls, then we would need those specific IRT members to identify specifically what we would be asking the council.

Because at this point the possibility of going to the council has been thrown out on the list and on the calls, but we're sort of going in circles about it and we need to either identify what the questions are that we need to take to the council if there are questions, determined whether they're desired questions or not, if not we have to move forward. So that I guess is an action item or a call to action if you would, who supports the position and then raise the possibility of referring the questions or issues to the council. Steve your hand is raised, you can go ahead.

STEVE METALITZ:

Yes thanks, this is Steve Metalitz. I actually agree with all the speakers so far. I certainly agree with Suzan and I appreciate her perspective as a member of the WHOIS to review team, but I think what Theo has said and what you just said Amy is also true. This question is meaningless that we've been asked to vote on, because it says one or more policy questions, we don't know what the policy questions are that people want to bring that's why I haven't voted yet because I was waiting till today to find out what that policy question is or are, and all I hear so far is angst about the GDPR and how busy we are, and what a mess everything is now.

To me that is not something that can usefully be dealt with I don't think by the GNSO council. I think Suzan was pretty clear on that, so if the vote is 99 to one I don't think this reflects a consensus because this is a meaningless question the way it's phrased here. Until we have some questions specified, if people want to specify a question that might be different, but that time spent arguing about what the question is and

fashioning that is time taken away from trying to bring across the finish line the implementation of a consensus policy adopted two years ago through the main Stakeholder process, and the longer this goes on the more that appears just to be a -- that process appears to be a sham. So let's try to restore its credibility by moving forward on this. Thank you.

AMY BIVINS:

Thank you Steve. So this is Amy again. Okay so I don't see any other hands in the room, but this is really a call to action at this point for those of you who raised the possibility of taking issues to the council. As I mentioned previously this has come up several times and every time -- recently when issues come up it tends -- some members of the list tend to revert to, "This needs to go to the council" or similar comments.

But at this point we have to decide whether we're going to take something to the council or not, and everyone's absolutely correct that if we do want to take something to the council we need to know what that is. So for members of the IRT who would like to take something to the council now would be an excellent time to try to clarify what specifically it is that you would like to consult with the council about other than the overarching broad category of GDPR.

So anyone who's on the call today, I see Theo, I don't know -- I know you have been one of the IRT members that's been supportive of taking an issue to the council. I don't know if you would like to provide any comments on that, or anyone else at this point. Okay so Theo your hand is raised --

JENNIFER GORE: Amy --

AMY BIVINS: -- you can go ahead. Oh sorry.

JENNIFER GORE: Oh I'm sorry --

AMY BIVINS: Was that --

JENNIFER GORE: This is Jennifer Gore. Theo, go ahead, and then I'll -- I just want to make a comment.

THEO GEURTS: Okay. Well I'm going to make a really quick comment. I've repeated this multiple times, I think we are out of scope for multiple reasons, but if the IRT cannot agree on this then I'm going to stop delivering my point it's that simple. Thank you.

AMY BIVINS: Steve, this is -- I mean not Steve, Theo can you clarify what you think we're out of scope on?

THEO GEURTS:

I think we're completely out of scope when it comes to the entire business bundle, the credibility of it post GDPR. I mentioned this in Abu Dhabi. I mean I think Redacted for Privacy is now the largest unaffiliated privacy provider in the world and I think after the PDP is done WHOIS is not going back. So I think that Redacted for Privacy is going to stay for a very long time, so the use of privacy will be much more limited for just a few actors.

So when coupled with the business of it, and we are already talked tons of times about the fees about it. I mean the whole set of program of 1.1 million USD for the onboarding, I don't see that happening. I mean that is just not realistic anymore. Privacy services will be a niche for a couple of registers who will need it out of some kind of necessity for whatever reason, or for whatever clientele, but I think the majority will just redact the WHOIS and charge nothing anymore. And I think we as an IRT, we are now dealing with that fact, but the working group never anticipated the current situation. So I think that just keeps creating issues there. Thanks.

AMY BIVINS:

Thanks Theo. So just to repeat back what I think the question or the issue that you -- the overarching issue in line with the GDPR or the current RDDS environment. It sounds like what you're saying is that if we were to ask the council a question, what you would propose would be a question related to the status of the overall program in light of the changed RDDS environment. At least that's what it seems like you're

saying, would you agree with that summary of your position or question? Okay, so we have a couple of hands in the queue. We'll go to Victoria Sheckler first.

VICTORIA SHECKLER: I think Jen had a comment, so why don't you let Jen go then I'll step in.

AMY BIVINS: Okay, Jen you can go ahead.

JENNIFER GORE: Thanks Vicky, thanks Theo, I appreciate it. This is Jennifer Gore ICANN Staff. So Theo I hear you on the necessity and the need for privacy services in a pre-GDPR world versus a post GDPR world, but I don't think it's ICANN's responsibility or obligation, and correct me if I'm wrong, for staff to determine if privacy services are needed as part of a registrar's business model, I still think there's elements within privacy proxy no matter the status of GDPR, that are relevant and need a part of the final report that came out of the working group and the direction that we received from the board. That's my only comment. Vicky please go ahead.

VICKY SHECKLER: Thank you, in relation to what Theo had just said, that to mind is a business model question, it is not a policy question. Because the fact is today there are several registrations that are behind privacy proxy, and there has to be a way to address the current ones that are behind

privacy proxy. If Theo's right and it turns out that turns out being a niche market or no market, time will tell where that ends up, but that's not a reason I think to undo this work unless people are willing to say, "We will no longer cut any privacy proxy registrations at all", and I highly doubt that people are ready to go there. Thanks.

AMY BIVINS:

Thank you Vicky. Do others in the room have comments on this? Jen your hand is raised but I think you already spoke to --

JENNIFER GORE:

I did, I'm sorry I'll pull it down. Thanks Amy.

AMY BIVINS:

So other IRT members that have supported the possibility of referring any questions to the council would you like to speak up and identify any specific questions that you think might be addressed by the council, or that we need to take to the council at this stage as opposed to finalizing these documents and proceeding to public comment?

Okay, so again everyone just to be clear, because this issue has come up several times on the list and in the calls, we're asking now because if not we're going to proceed to public comment. We're going to finalize these documents, but for those of you who have raised these issues if you want to explain why you might want to refer something to the council now is the time to do that. Okay, Darcy your hand is raised you can go ahead.

DARCY SOUTHWELL: Thanks Amy, it's Darcy Southwell for the record. I just want to ask sort of a process question here. So your suggestion now is that we need to decide this right now, but you also have a poll out. So I'm just trying to figure out what are you going by?

AMY BIVINS: Thank you Darcy. We're going by all of it. The poll -- We will take the poll responses into account, we're also taking the discussion on today's call into account. We put out the poll as a means to try to obtain additional IRT feedback because this issue has come up repeatedly but it's not going anywhere, and when issues come up it's repeatedly thrown out as an option but it just sort of sits on the list and so we're, for lack of a better term, we're going in circles about it.

So the poll was an attempt to try and bring this to a resolution one way or the other so that we can move forward if there's not any consensus on the IRT to take anything back to the council. So we're going to be considering the discussion today. We will be considering the results of the poll. We've heard obviously criticism today about the way that the poll's questions were structured, so obviously the results of the poll won't be definitive. We'll be taking all forms of input into account on this.

The point is that we need to bring this discussion to a resolution and we've had -- this is now the second week that we've talked about this in addition to many weeks on the list, and in various stages of the project it's come up a few times. So I hope that helps in terms of process. The

point is that if there is support among members of the IRT to take things to the council we need to hear why and we need to hear specifically what needs to go the council, and it can't just be this thing in the abstract at some point in the future. We need to reach a resolution. Theo your hand is raised, you can go ahead.

THEO GEURTS:

Yeah, a question though and this is not related to what goes to the GNSO. I don't think there's any progress there or much support for it, so I think we can sort of drop it unless everybody speaks up now. A different question though, FULCRUM mentioned a whole lot of stuff on the list what could be removed or could be edited, so large support from Steve. Basically what are we going to do with Temp Spec which is now in it? I mean before we go to a common period I think we still need some cleaning up to do.

AMY BIVINS:

Thank you, Theo, and that is certainly in the works as well. That's on our agenda for today. Sort of talking through the proposed edits, so we have to be in agreement and we would like to talk through those as well. But we felt that the more fundamental question was important to get out in front and to talk about at the beginning of the call, because it was the consensus of the IRT that we should refer something to the council now in terms of that, that we don't want to waste too much of our time working on documents that they might be referring back to the council. But we certainly will be working on editing those documents.

Okay. So for those of you in the room again, for anyone who has suggested that we might want to refer questions to the council, would anyone in the room now like to raise their hand and explain what questions you might have that you think would be appropriate for the council that you would the IRT to consider? If not and these questions aren't identified on the list this week, to make very clear again we're moving ahead. Okay, Darcy your hand is raised, you can go ahead.

DARCY SOUTHWELL:

Thanks. This is Darcy Southwell. So I'm not saying that this as council liaison, I'm saying this as a registrar, but I just have to say that I really object to the process Amy. You have put a poll out there, you -- This is very confusing. Regardless of whether we get consensus or not, I find this really a confusing way to gather consensus. You're sitting here telling us repeatedly, "Speak up now or we're going ahead".

You have a poll out there that is open until tomorrow. So I find this really confusing and I think it's unfair to the members regardless of which side of the aisle you're on here, this is how you're handling it. If you're going ahead if no-one says anything right now, just close the poll and let's stop talking about it. This is really frustrating.

AMY BIVINS:

Thank you Darcy for the feedback on that, and I apologize that the poll is confusing or at least to some members of the IRT. From the Staff position though, we also are in a position where we've been given materials to implement and we also have various members of the IRT saying, "This should be taken to the council". But they're not telling us

what should be taken to the council or when, and so we don't have a clear picture of what it is that we're supposed to do in terms of status. So that's where we are and we need to decide this issue and move on or not, and that's why it's happening this way.

So I don't know if others have comments about this, but either way we need to redirect [inaudible] on this because the possibility of going to the council can't be used as a roadblock, because otherwise it just keeps coming up and we keep talking about it but we can't make any progress. Okay does anyone else in the room have comments on this topic? For the record there is some discussion in the chat about it. Okay so we have no-one in the room for the record that would like to suggest the possibility of taking anything to the council at this stage.

Okay does anyone else want to raise their hand, does anybody else have thoughts about this? Okay, so for the record we have no further hands on this topic, we have continued discussing in the chat that I don't feel like we really need to go through at this point, but we have the chat transcribed that you can read on, and I'll also send it around to the list.

Okay, so we're going to move on to feedback on the draft accreditation agreement, and you should have seen this morning that I distributed a mark-up of the agreement to the list. I want to apologize to Theo and Peter because I noticed that after I sent it out I had not incorporated a couple of comments from them. So I updated the document again and that's what you see on the screen with their additional feedback that had come in earlier last week. I didn't want to inundate you with multiple e-mails in a row this morning, so we'll send out the more complete version of this contract after the call today.

Okay, so the first topic that we want to talk about on the call is specification eight, and I know this is out of order in the agreement but it seems that this is the piece of the contract that is the most contentious, for lack of a better word, in terms of your feedback. We see that many IRT members don't like the inclusion of this here.

For those of you who were not on the call last week, specification eight which you should see on the screen, is a data processing specification and this was adapted from the temporary specification. The issues that were raised related to this a lot of it was related to holistically in terms of process. Because this was adapted from the temporary specification, the concern was that the temporary specification is obviously temporary and it could change, so we don't want to necessarily want to enshrine something temporary into a permanent agreement.

So there was also a question on the call last week about whether or not we should -- whether or not we had to include it all. For example could we just have a provision that says that providers have to -- they have to have data processing in place, and as long as they're composite to applicable laws which are listed on the provisions that are here.

I consulted with the legal team and they said that we do need to have something specific related to processing in here, we can't just leave it to applicable law. But what the specific requirements have to be are up for discussion. So if you want to provide specific edits on this provision please do. We don't have to copy and paste what's in the temp specs, we can modify this. So if you have problems with this and you want to discuss specific edits we can do that. Steve, your hand is raised, you can go ahead.

STEVE METALITZ: Yeah thanks, this is Steve Metalitz. I hear what you're saying that legal says that what Volker proposed and I supported will not work, but I don't understand why, and I'm wondering if you can explain why they don't think that would be adequate.

AMY BIVINS: Thanks Steve, and unfortunately we don't have legal on the call today. Our normal contact in the legal team is out for a family situation so she's not here, and I think she can do it better justice than I could in talking you through all the issues why this needs to be here. So I will commit to having more talking points from her next week.

But the high level reason that I was given at least, was that because this whole agreement deals with data processing, the accreditation agreement in general, privacy and proxy providers are dealing with personal data, the legal team wasn't comfortable not having requirements related to processing at all in the agreement and just leaving it to providers own assessment of the what their applicable law requires. But I can get more details – justification for why specifically they believe that to be the case and when we meet more next week, and I'll take that as an action item for me. Theo your hand is raised, you can go ahead.

STEVE METALITZ: Could I follow up on this, or I'll wait till after Theo.

AMY BIVINS: Oh you can go ahead Steve that's fine.

THEO GEURTS: No go ahead Steve. Go ahead.

AMY BIVINS: Okay.

STEVE METALITZ: Yeah okay. Thank you, just two points. One is basically what Volker proposed would say to a provider that is subject to the GDPR that you have to comply with the GDPR with regard to your data processing, and maybe we can turn this into some sort of certification if you will that the provider certifies that it is in compliance as far as data processing is concerned with the GDPR, and then if they're not there would be a hook for compliance.

So maybe that's a way of dealing with it, but I think my other concern that I raised in my comment is there's going to be some proxy and privacy providers for whom all of this EU stuff is not highly relevant and certainly not controlling. So to make them sign this thing that has all this jargon in it from the GDPR and says they will submit to the authority of a European data protection authority and so forth, it just may not make any sense for them.

So I guess I would have two comments. One is could we consider just simply changing what Volker proposed to a certification requirement so that if in fact the provider failed to do that there would be a basis for

de-accreditation. And second maybe other than kind of shadow box about this, we could ask that someone from legal be on the next call so that we can ask him or her to explain further why this is needed. Thanks.

AMY BIVINS:

Thanks Steve, this is Amy and I think that's an excellent idea and I'll consult with the legal team to see if we can them in on a call next week. And I do think you're right this is certainly -- it reads like the GDPR requirements and we will have providers that may not be in the region or have customers there. So we will certainly take that feedback back and I'll do everything I can to get a legal team member on the call next week. Theo your hand is raised, you can go ahead.

THEO GEURTS:

Yes thanks, and make sure it's their protection compliance not just GDPR compliant. Anyways in terms of process, what happens if the, well let's call it temporary specification, stays in the draft, it goes through the comment period, the EPP team is also working on this so there could be changes to it, how does that add up if the language changes or changes a lot and we already went through the comment period? Is that language going to be changed and we go through another comment period, how does that work in process? Thank you.

AMY BIVINS:

Thanks Theo for the question. In terms of process that's a really question. I think we have a clear picture, or a clearer picture of what

would happen if for example this contract was adopted and the program was implemented before the EPDP occurred, because through the consensus and temporary policy specification if the EPDP adopted a permanent policy or a new policy through the PDP process that would -- if it contradicted or superseded this, the requirements would apply in their place.

I think that if the EPDP finalized the requirements after this agreement was a public comment but before this agreement was finalized, that is a different question and I'm not entirely sure what the answer would be. In a situation where the requirements changed, or the proposal requirements changed substantially after the public comment period, we would consider doing a second public comment period if the requirements were changed within the IRT.

It's the way the process works is if the requirements were changed within the EPDP, I'm not sure whether there would need to be another public comment period for this or not. Me thinking personally I don't think so, but I don't know, and I think that that's something that we would have to address within the IRT and also with the policy team. And it's also a question that we could ask during the public comment period, if we were to proceed to public comment now it would be how the community believes that any subsequent requirements from the EPDP might be addressed in the IRT.

Theo, we can always be an EPDP on PPSII, yeah. Does anyone else have comments on this? Okay. So obviously we've -- in this document we've made a note of all the feedback we've received so far on this specification, an action item for me is to have hopefully someone from

the legal team on the call next week to talk about this specifically, and if not -- if for some reason we can't to at least have very clear justification for why we think this needs to be in here.

So please continue reviewing this specification and if there's specific provisions that you have an issue with, or see an issue with, or that you think should be adjusted please let us know because I can go ahead and take that to the legal team now and we can start working through that before next week. For example Theo, your comment down in I think it's in section three of this about -- it was a reference to a specific technology I think, that was helpful so that's something that we'll take a look at for an encryption standard, sorry. Okay does anyone else have comments specifically about this specification right now?

Okay. So we have about 15 more minutes. Steve said, "I'll try to suggest certification language and circulate". Okay thank you Steve that would be immensely helpful, thank you for that help on that. Okay. So in the time that we have left I go back up to the top of the agreement and we can start discussing the other proposed edits that we have. Obviously we're not going to get through them today in the 15 minutes, but we can get as far as we can and then we can continue on the list and then next week.

Okay, so you should be able to scroll this document I believe, but I'm going to scroll down in case you can't to the first proposed edit. It's in section 3.2.2 and it's related to data retention. So what we have in the agreement at this point is that -- there's basically there's a one year data retention requirement whereby a provider has to retain certain information for the life of the agreement and for one year thereafter.

The proposed edit from Volker was to add, “or the maximum duration allowed by applicable law if shorter”.

Steve Metalitz also commented on that and said he doesn’t see an issue to that -- with that change. Does anyone have an issue with that or want to talk about that. Volker, I don’t know -- is Volker -- I don’t see Volker on the call. I don’t know if any others who supported that change would want to talk about why you would propose that, but if we don’t have further comments I’ll take it to legal and see what their feedback is on it.

Okay, Theo’s saying he supported all of Volker’s comments. Yes I’ll note that Theo, and there were several other registrars in the group who also supported Volker’s comments. I believe it was Sara Bockey, Darcy Southwell, Chris Culling, and possibly McCaley. I’ll double check and make sure that I’m reflecting the record accurately, that many of the registrars in the group supported Volker’s recommendations.

Okay, so the next proposed edit here was in section 3.3, and I will scroll down, it’s on page eight of the document, and we have some proposed edits about this. This section was adapted from the RAA and it concerns the providers rights and data elements that are listed in WHOIS or the RDDS, and Volker’s point was that because the provider doesn’t provide WHOIS -- or doesn’t provide RDDS the same way a registrar does that this is irrelevant and that this should be cut. Steve responded and suggested that maybe we should just edit this and that it’s not completely irrelevant. I don’t know if others in the group have specific comments about this now. Steve your hand is raised, you can go ahead.

STEVE METALITZ:

Yeah, this is Steve. As I think more about this I think we really do need something like this, because there's going to be as we've said, there are some registrars that are not redacting all the data and don't need to. And where this kicks in is in the case of a publication, remember which we have as a defined term. If there's a provider that's providing a privacy proxy service and for whatever reason it terminates that service, it could be anything from it's not being paid for to, "You violated the terms of service", or whatever, when it terminates that service it's supposed to put these records in the, again as we originally contemplated, in the publically accessible WHOIS.

So certainly for those registrars that are making some or all of this data available because they're not subject to the GDPR, or because it's for a legal person or whatever, we still need a license for this data for the provider to the registrar. So that really hasn't changed. I mean the extent to which this license will have to be used may change, but there certainly still will be circumstances in which it has to be used.

The other point I raised and I appreciate Volker's response on this, was this is also a useful list of what should be disclosed in a case where the whole disclosure framework has been followed or something that fall outside the disclosure framework and the provider chooses to disclose. So we can look at how we best are to phrase that and I'll try to do some suggestive language on that, but I think Volker and I seem to be in agreement that this list of 3312 and three at least is still useful to have in the agreement for that purpose. Thanks.

AMY BIVINS:

Thank you Steve, and we look forward to anything you're able to share on that. We appreciate your help for sure. Does anyone else have comments on this section? Okay, for anyone who would like to comment further on this on the list please do. Okay so moving on to section 3.4. Section 3.4 is related to the data escrow requirements for private proxy providers. You'll remember that the data escrow specification is separate from the private proxy accreditation agreement, but this is the contractual provision that requires the providers to perform data, or to make data escrow deposits.

The proposed edit from Volker would note that the requirement is void if the sponsoring registrar is already escrowing the data that the provider would be obligated to escrow. Steve responded to this proposed edit and said that he would be okay with this but it may be spelled out in the terms specified by ICANN which are referenced in the agreement, which is the specification. We're also anticipating that this may be addressed or that this will be addressed in the escrow agreement as well, but I can take this back to the legal team and get their take on that. Does anyone have further thoughts about this provision? Steve your hand is raised, you can go ahead.

STEVE METALITZ:

I was confused because I thought we had a specification drafted for escrow that would be referenced in here, and then I wasn't able to put my hands on that and maybe that was we're just going to have a separate escrow agreement. But in any case this point that Volker makes which is valid I think, should be addressed there. So that's my only question is whether it needs to say that here in the agreement or

whether it references and agreement, or specification that says that if the registrar's already escrowed at the provider that in affiliate to the registrar, does it need to do so also? Thanks.

AMY BIVINS:

Thanks Steve. And yes, that was the plan, or that is the path that we're on at this point is to have a specification that's separate. At this stage we're anticipating that there will be a specification and also the escrow agreement. The requirements will be in both of those agreements depending on the appropriate place for them, and if it's helpful, I can't remember the exact date when I sent around the most recent drafts of the specification but I can dig that up and send it around again.

Our tech team, we're still working through some issues related to that specification in terms of how to work with -- or how to coordinate with the registrar, got to have the requirements where registrars are affiliated with the registrar -- where the registrar is affiliated with the privacy proxy provider, but that -- The allowance for an affiliated provider to escrow through the registrar it's expected that it will certainly be addressed there.

It could be addressed here too, so I think if we want to take that approach. But I'll consult with the legal team on that and I'll also look back at the specification documents to see exactly where that is, and see -- It could be that the most recent version is the most recent version that you have, and if not I'll send an updated one.

Okay, so apologies if that explanation was likely less than clear, but yeah so I will take that as another action I have to figure out if that is in the

escrow spec, just to double check or triple check to make sure that you have the most current version. Does anyone else have comments about this section of the agreement at this point? Okay. So moving on, I think we have time to talk about one more section before the end of this call.

The next set of proposed edits are on page nine of the agreement, and this is section 3.5. And, okay we have several comments related to this section. Starting at section 3.5.3, and the comment from Volker was that -- so this section it requires providers to provide various notices to customers, and this 3.5.3 specifically is about accuracy requirements are in the contract. This is where the provider notifies the customer about the customer's obligation to provide accurate and up to date contact details.

The comment from Volker was a suggestion to move this down to a later section of the contract, the addresses, the terms of service. There was a response from Steve, and the response from Steve was that it -- basically, it just related to the structure of the contract and where this goes, and it was questioning whether this should be pushed down to a terms of service requirement or not, and so we are going to review the feedback that we received from Volker and Steve.

Volker's point was that data accuracy is a responsibility of the customer and not necessarily the provider. He clarified that I think yesterday on the list, and so that was why he was proposing to move it down to the terms of service. Steve, I don't -- okay yeah, your hand is raised Steve, I don't know if want to speak to this now, if not we can leave this open on the list as well.

STEVE METALITZ:

Yeah just briefly, this is not just a notice requirement. This is actually an obligation to terminate services if accurate information is not provided after certain time periods and so forth. So that's why I think it needs to be here so that ICANN can enforce it. ICANN doesn't enforce a providers terms of service with its customer. ICANN enforces what's in the accreditation agreement as an enforceable point.

Obviously yes, it has to be disclosed in the terms of service, but if it's enclosed in the terms of service but never enforced then you have a problem, which is a compliance problem. That's why I think it needs to be here, but in Volker's absence maybe I'm missing that, but I think what Volker said is this is not simply a notice requirement. Thanks.

AMY BIVINS:

Thank you, Steve. Does anyone else have comments about this section now? If not I see that this is one that we probably need more time to discuss, and it may be an appropriate one to pick up with next week. Also I will check with the legal team just to get their feedback on this as well. But Steve you're correct, if it was just a terms of service requirement, from the compliance position the requirement would be that -- in the languages of terms and services, it wouldn't be insuring that the information is actually accurate. So from a compliance point of view that's how that would work.

So since we only have a couple of minutes left on the call, I think that this is probably a good place to stop and we can pick up with this topic next week. Okay, so I just want to clarify again before we wrap up for

today that obviously we are going to go through your feedback carefully with respect to the initial issue that was discussed this morning -- this morning Eastern time at least, about the comments that have been made about potentially taking a question to the council.

To clarify again, if and IRT member on the call or otherwise listening to the recording believes that there is a question that needs to be escalated to the council at this stage as opposed to going to public comment, we need to know that, we need you to share that on the list, and we need you to share it with the list this week. You can also choose to share your opinion on that issue with us via the poll that was distributed yesterday.

The poll is not going to be determinative of determining whether or not there's IRT consensus to take an issue to the council, but it is helpful to gauge various IRT members position on issues when they're not vocal on the calls or the list. So it's a useful supplement for determining consensus or not. We will be obviously 100% transparent about the results of the poll. We will tell you what the results are after we close the poll at the end of the day tomorrow, and if anyone I guess on the call today or on the recording has further thoughts about this, please submit them to the list. So we want to wrap this issue up and move ahead, or escalate anything that needs to be escalated so we can move forward.

Okay, so does anyone have questions or comments before we wrap up for today? Alright thanks so much everyone, I know I have a few deliverables for you so I will get them to you as quickly as I can, and I hope you have a great rest of your day. Thanks, bye.

[END OF TRANSCRIPTION]