

AMY BIVINS:

Hi, everyone. We'll go ahead and get started. Good morning, good afternoon, and good evening. Welcome to the Privacy & Proxy Services IRT Call on September 13, 2018. I am Amy Bivins from ICANN Org. I'd like to remind you that this call is being recorded, so please state your name before speaking for the recording and for the transcript. Please, if you're not speaking, put your phones on mute to avoid any background noise.

Today, our agenda, I sent it around to the list already, but our plan is to continue reviewing your feedback on the draft accreditation agreement. I'm taking all of your feedback on this draft back to the legal team for review and I hope to have a response to you quickly, hopefully next week.

Does anyone have questions before we get started? Okay. Seeing no hands, we can go ahead and dive back into this agreement and our discussion about the [inaudible] that were raised on the list. Again, if you're not on mute, please mute because we're getting some feedback on the line. Thank you.

So, we're going to pick up in section 3.5.3.3 of the contract. This section, the proposed edits here were added by the legal team during the GDPR related review. This section, it states that a provider shall provide notice to a customer upon signing onto the privacy-proxy services and also for renewal or extension of the term of privacy-proxy services. And it has various provisions in here.

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

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Without reading the provisions to the group, I know that you can read them on the screen if you'd like and I'm sure you're familiar with them, the feedback that we received was that this is too EU-centric and that these disclosures here are designed to comply with GDPR and may not be relevant to providers elsewhere or that are not in the European Union or that don't have customers or processors there.

Does anyone have other comments about this section now? If not, I'll take that feedback back to the legal team and see if we can make some adjustments to this. Okay. Seeing no hands on this one, I will let you know after I discuss with the legal team what the position is on what we can do as far as edits to this section. Hopefully, I'll hear back before our meeting next week. I'll send anything back to the list.

So, the next section that we have that we're going to discuss is section 3.5.3.4. You should be able to scroll in the document but I will scroll down as well, just in case you can't.

So, this section states that the customer shall consent to the data processing referred to in the section that's above this. The feedback on the list that we received from Volker Greimann originally was that this should be eliminated from the agreement. The feedback was that this is invalid – or require consent that can't be required under the GDPR.

Steve disagreed with Volker on this point and the discussion really has come down to whether or not the data processing is required in order to provide the privacy or proxy service.

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We have both Volker Greimann and Steve Metalitz in the room. I don't know if you have further comments you'd like to share with the group on this. If not, I'll take all the feedback back to the legal team for review.

So, I don't believe we've had any other discussion from other IRT members on the list about this, but others are welcome to weigh in as well. Steve, your hand is raised. You can go ahead.

STEVE METALITZ: Yes, thank you. Before I forget, I didn't get my hand up in time on the previous sections, 3.5.3.3. One question I had, I have to go back and look. I don't know what was—

UNIDENTIFIED MALE: [inaudible].

STEVE METALITZ: I'm sorry, are we getting some crosstalk here?

AMY BIVINS: I'm sorry. If anyone is not on mute, please mute your phone. Hold on, Steve, I'll try to mute. Okay, that should be better now. You can go ahead, Steve.

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STEVE METALITZ:

Okay. My only question was I don't remember what was in 3.5.3.3 in the earlier draft. The OSC in this document is the language that legal wanted to add. I just point that out. I guess I can go back and look.

And on 3.5.3.4, I think the issues are pretty well put out, stated, between me and Volker and my approach. I don't think this is necessarily an invalid basis for processing for this service, even if it is for a registration service. That was my only point on that. Thanks.

AMY BIVINS:

Thank you, Steve. As far as what was in the section 3.5.3.3 before, I honestly can't remember either, but I'll go back to the prior version and look and provide a red line against that. I think it looks like ... Looking at the document, I think the disclosure, the required disclosures may have been expanded a little bit to include additional disclosures related to data processing. But, I'll confirm that. And I believe what was in this document was before was taken from the RAA and it was similar to what's in the 2013 RAA, but I'll confirm that for the group and let everyone know.

Does anyone else have comments about this? Steve, your hand is raised. You can go ahead.

STEVE METALITZ:

My only point on that was that might be worth considering, just going back to that language, if the staff is not comfortable with just having a very truncated version of this 3.5.3.3. That's all. Thanks.

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AMY BIVINS:

Okay. Thank you, Steve. I'll make a note of that, too. So, the next section where we have some feedback is section 3.5.3.8. I'll scroll down to that quickly.

This section states that the customer shall represent to the best of the customer's knowledge and belief that neither the registration nor the name nor the manner in which the name is used infringes the legal rights of any third party.

The feedback on the list from Volker was that this is duplicative because this is already required under the registration agreement and that it shouldn't be required again here.

Steve responded to this on the list and suggested that it's not duplicative necessarily, that even if this is in the registration agreement, it should also be required in the privacy-proxy service agreement, so that the privacy-proxy service could be terminated in the event that this isn't met by the customer.

Sorry about that. You should be able to scroll in this document now and I'll scroll over, too. Hopefully, that helps in the document.

So, the main issue, just to pare down these comments here, is whether or not this representation should be in the privacy-proxy service agreement or whether it's adequate to have it in the registration agreement, assuming that the registrar has such a provision in the registration agreement.

Volker or Steve, either one of you, I don't know if you want to elaborate on this point further or if anybody else in the room has comments.

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Otherwise, I'll take it back to the legal team. Steve, your hand is raised. You can go ahead.

STEVE METALITZ:

My other point on this was just that I don't think that the change Volker is asking for really has anything to do with GDPR and all the developments that have happened in ICANN since then. If we're going to go through and reopen text that's pretty much come to rest months and months, maybe years, ago, we could be here a long time. So, I would just add some skepticism about whether we should do that. But, if we are, then there may be other things we want to reopen as well. Thanks.

AMY BIVINS:

Okay. Thank you for that, Steve. We didn't specifically limit the provisions that the IRT was requested to comment on. When we distributed the GDPR-related markup, we didn't specify that IRT members couldn't comment on other sections of the agreement, but I've certainly noted that if we revisit sections continuously, this would take a while. Volker, your hand is raised. You can go ahead.

VOLKER GREIMANN:

Yes, thank you, Amy. Yes, Steven is partially right when he says that the comment doesn't have anything to do with GDPR. This is a basic comment that mainly reflects my basic view that the registrant shouldn't be required to agree to the same stuff over and over and over again when they have already agreed to that. They should not inflict or

infringe on third-party rights. With the registrar, there is absolutely no benefit in including that in the privacy-proxy agreement again. It does make that agreement longer and more apt to not being read, therefore I am very much a fan of excluding any language where registrant has to represent certain things that he has already represented when the domain name registration or request for transfer, whatever the case may be.

And the privacy-proxy service actually also does not have any benefit from such a representation, so I don't see the need for such language in this agreement and there may be other areas where the agreement duplicates the RAA.

On that, some duplication has actual benefit to the community, to the registrants, or to the privacy-proxy service provider or to third parties. Then I see no need to include that duplication. If there are benefits to [inaudible], then of course [inaudible] to including that. But, if we just include because it's something nice to have, then I don't see the need. Thank you.

AMY BIVINS:

Thank you, Volker. I'll note that we have Sara Bocky and Theo Geurts in the chat also expressing agreement with that. Steve, your hand is raised. You can go ahead.

STEVE METALITZ:

This could be a benefit to third party, so if that's [inaudible], because then you'd be able to find out who is the registrant that is infringing on

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your intellectual property rights, which might not if the registration is simply cancelled. The cancellation is helpful, but you may actually want to pursue some legal action or some other action against this person. So, that's the advantage to the third party. This is not the most vital provision in the entire agreement, but I think it does serve a purpose. Thanks.

AMY BIVINS:

Thank you, Steve. Does anyone else in the room have comments about this section? Seeing no hands, we will move along to the next recommended edit. This was proposed by Peter Roman. Unfortunately, it looks like he's not here today, but we can go ahead and discuss it anyway.

The proposed edit from Peter was on the list and it was in 3.5. There's not currently a 3.5.7, but he was proposing to add a new provision that would require that a provider not provide services for customers whose data is not public or potentially whose data is only accessible through the gated WHOIS.

We've had some pushback to this recommendation on the list that this is beyond our scope and even if it's not or if this were to be within our scope, there's some opposition to this on the substance as well. I don't know if anyone has comments about this now, but we will certainly take all the feedback back on this as far as scope. This was certainly a departure from – not a departure, but an expansion of what's in the agreement at this point. So, I personally would not think that this would

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be something that we could add here, but I'll discuss that with the legal team.

And we have similar feedback in the chat about scope, so we'll make a note of that, too.

Okay. We'll move. Okay, so we have a question from Volker in the chat. Does this provide added benefit? Oh, I think this is about the prior section. So, we have some additional discussion in the chat, not on substance I don't think. Mostly on process. So, moving on, and I'll post the chat transcript but it's not directly related to how to handle the specific feedback at this point, but we'll make a note of your feedback and I will share any further developments on this line after I discuss with the legal team.

So, we had some feedback on the list on the next section, 3.6 related to fees. Volker raised his opposition to this and suggested an edit to the amount of the proposed fees. Steve also noted on the list that the proposed fees are a topic that was also mentioned in the recent WHOIS2 Review Team draft report. So, I will take all that back to the legal team and the finance team as well and I will let you know if there's any further movement on that. I don't know if anyone else has comments on this at this point. Seeing no hands on this one, we can move on to the next section.

The next section is section 3.11.5 and I will scroll down just a moment. So, section 3.11 includes a list of required contact information that the provider has to post on its website and also information that the provider has to keep current with ICANN.

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One of the edits that was proposed in this section during the GDPR-related review was that the provider's e-mail address is provided to ICANN and published on its website can be a generic e-mail address. The reason why this edit was proposed I believe was to make clear the e-mail address doesn't have to include a person's name or personal information. We had some feedback on the list asking what a generic e-mail address is and also some comments about potential difficulties that a provider would have in determining whether or not an e-mail is generic or not.

I think possibly that feedback may have been ... It may be more relevant in the context of a customer e-mail address versus a provider e-mail address, but I could be incorrect. So, if anyone in the group has thoughts about that now, please raise your hand. I see Volker is in the queue and also Theo. Volker, you can go ahead.

VOLKER GREIMANN:

Yes, Amy. You're absolutely right. I was reacting to [inaudible] e-mail address [inaudible] where this was mentioned and I assumed that this was [inaudible] refer to a customer e-mail address which of course long topic of discussion there. My comments were misdirected and I would like to remove them at this point, because while they may remain relevant in different contexts, in the context of providing e-mail address, they make no sense. Therefore, I remove.

AMY BIVINS:

Okay. Thank you, Volker. Theo, your hand is raised. You can go ahead.

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THEO GEURTS: Yes. Thanks, Amy. Why is that language even in there, a generic e-mail address? I don't get it.

AMY BIVINS: I believe, Theo, that it was added out of an abundance of caution to indicate that an e-mail address does not have to include personal information, but I don't believe ... There was nothing in there before that said that it had to be a name. So, I think that this is something that could be potentially cut if the group would like to have that removed, if you have thoughts about that.

THEO GEURTS: It sounds, however – and this is somewhat going a little bit off topic here, but I keep seeing language like this in a lot of different groups within ICANN. I think we are going a little bit overboard here. I mean, I understand there is some ... I'm glad that people are aware of GDPR, but putting that in every small single detail. I mean, it's up to the providers to comply with all these laws. The next thing is we're going to put in a structure how to drive a car because some registrars might drive a car. Keep it to the people who are affected by these laws and don't try to overly specify the language. I guess that would be a good suggestion here. Thanks.

AMY BIVINS: Thanks, Theo. Steve, your hand is raised. You can go ahead.

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STEVE METALITZ: Yeah. I agree with Theo on this point, that we can just drop that in 3.11.5. I guess before we leave this whole section, I wonder if ... I'm sorry I didn't raise this on the list. Why is 3.11.6 deleted by the staff? Is this something that we had previously decided to do? Because I can't remember our doing that. So, it seems [inaudible].

AMY BIVINS: Yes, thank you, and thank you for that feedback. The reason why this edit was proposed was that the IRT discussed this previously and there were concerns raised about this previously, that there was no real resolution on it either way at that point.

If you'll remember, the final report, it doesn't say exclusively what sort of contact information a provider has to publish on the provider website. It just says provider must publish business contact information on its website, so it was a little bit unclear as far as exactly what extent of contact information needed to be published on the website.

The original text was taken from the RAA, the information specification and moved here, but there were some concerns raised – and this was probably a year ago at this point or more – about whether the officer information was really relevant or needed for providers or not and then during the GDPR-related review, it was proposed that we potentially just cut this, given the concerns about personal information with the officer information, their name, and their contact information.

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But, if the group has concerns about that or would like to explore potentially adding that back in, please let us know because we can do that.

STEVE METALITZ:

I have some concerns about it because this is not just ... First of all, I think it's pretty obvious that if you've got an officer or a provider, that the company, the provider, is going to obtain your consent to publish this information if it's required. So, I don't see the problem really with publishing it on the website.

But the first sentence of 3.11 is about what information has to be provided to ICANN and the last sentence is about updating that information. Certainly, ICANN ought to know who the officers are, I would think. I think that's part of the application process. So, I'm not clear why 3.11.6 would be dropped, too.

AMY BIVINS:

Thanks, Steve. It's possible that that could have been an over-inclusive proposed edit to this, so we will certainly take that back to the legal team to see, after obviously we get further input from others in the group because we have hands raised, if we were to keep this off the website, whether we can make some tweaks with it. At a minimum, the information would be provided to ICANN. Theo, your hand is raised. You can go ahead and then Volker is next in the queue.

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THEO GEURTS:

So, actually, in the light of GDPR and me being an officer, I don't think I would like to have my information plastered all over our website. I think that would be violation of the GDPR, actually. I mean, I cannot actually really give my consent to it. There will be [not] really given. So, I'm kind of wondering where we are going with this. I think that ICANN is not in a position to force officers to be published on a website with their full name, etc. I think that goes way beyond the scope of GDPR. So, I think actually you would be in violation of the GDPR. So, you might want to take that back to legal. Thanks.

AMY BIVINS:

Thank you, Theo. I will take that back to legal. Volker, your hand is raised. You can go ahead.

VOLKER GREIMANN:

Yeah. I'm going to take a little bit different stance than Theo. I would say it depends on the jurisdiction where you're in whether the information of the officer has to be published on the website or not. Some jurisdictions, many of them in Europe, require certain officer information on the website. Others do not. But, I agree with Theo when I say that is not the position or it shouldn't be the position of ICANN to mandate such publication either way simply because of privacy reasons. If the jurisdiction [inaudible] providers are based require such publication, then it should be on there because of what [inaudible] dictates, there is not and shouldn't be on there. It's simply something that I feel ICANN shouldn't be getting their hands in. Thank you.

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AMY BIVINS:

Thank you, Volker. I have a question for those who support this edit or at least support the possibility of ICANN not requiring this information on the website. The question is whether or not you would support an edit to at least update the requirements that this information has to be provided to ICANN.

I'll make clear that based on this edit right now, I don't think that this works with the applicant guide, which you haven't [inaudible] lately, but the draft application questions you require providers to provide this information for the purposes of background checks. So, we would need to take a look at how we work together if we were to keep this edit.

Okay. So, we have feedback in the chat. There seems to be support for providing this to ICANN, so I think we may just need to make some copy edits here, to make clear that this has to be provided to ICANN, but not necessarily ... That it doesn't necessarily have to be on the website.

If others would like to discuss further potentially writing back in the requirement to have it on the website, please let us know. Steve, I don't know if you have further comments about that. Steve, your hand is raised. You can go ahead.

STEVE METALITZ:

I just don't really understand the justification for not publishing it because I guess this gets into some very possibly difficult questions about why someone who is an officer of a company wouldn't consent to doing something that would allow the company to do the business that it's supposed to be doing. So, I'm not sure what the problem ... I understand Theo doesn't like it. I don't think it has anything to do with

GDPR. That's just his personal distaste for having his name made public, I guess. Again, I don't think this is the most important provision in here, but I don't really think it's ... I think you should at least consider whether this should be published, which I think is probably still the case for the registrars, too. I don't know. I don't know [inaudible] lately.

I think it's important that it be disclosed to ICANN and I guess that means that if we need to find out who the officers are, because as part of an investigation, we want to know what their relationship is with other people, then I guess we have to subpoena that information from ICANN or something. So, if ICANN legal thinks that's the way they want to go, then maybe that would answer it. Thanks.

AMY BIVINS:

Okay. Thank you, Steve. We have Volker in the queue and then Margie Milam.

VOLKER GREIMANN:

Thank you. Ultimately, I think the justification always has to be for publication or for not publication. So, if somebody wants to justify a certain data element to be there and published for all to see, then that has to be justified. We don't have to provide a justification for not publishing any information. And like I said, jurisdictions vary and what [inaudible] companies have to say about their officers varies from jurisdiction to jurisdiction and I wonder if some of even the biggest Internet companies that are out there providing services on the Internet are providing all their officer information on the websites. I might be



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wrong there, but I think the majority don't and why should privacy services be different? Thank you.

AMY BIVINS: Thank you, Volker. Margie, you're next in the queue. You can go ahead.

MARGIE MILAM: Sure. I just wanted to agree with what Steve Metalitz said. I believe, if I'm not mistaken, that if you're an officer of a corporation, you effectively have your information in the [inaudible] as well. It's part of what you file with your incorporation state or country. So, I encourage keeping that information and I guess we could talk about whether it's public or not. But, certainly, from the ICANN perspective, ICANN has no problem being able to access that information for its regulatory oversight.

AMY BIVINS: Thank you, Margie. Does anyone else have comments on this topic? Okay. So, I will take this back to the legal team, as with the rest of the input and I will let you know what their feedback is on this.

So, the next proposed edit is in section 3.17 and this is on page 19 of the agreement. So, section 3.17 requires that the provider comply with the [reviewer] requirements, and if you look down at page 20, it goes through the specific [reviewer] requirements that were in the final report.

So, the proposed edit here from Volker was to add "to the extent permitted under applicable law." Steve Metalitz commented that he didn't oppose this but would defer until discussing the edits in the disclosure framework.

So, we want to open this topic up for the group generally whether or not you would support such an edit in this section, and if not, why not, just so that we have a full record of views on this. Both of the disclosure frameworks include provisions related to applicable law, but this section would cover more broadly any [review] requests, so that might be a reason to include it here. But, I'm sure that others in the group have more ideas about this as well. Steve, your hand is raised. You can go ahead.

STEVE METALITZ:

Yeah. Just on what you just said, I think this provision 3.17.1 only applies to the ones that are covered by the two disclosure frameworks. Am I mistaken? I think that's correct. So, that's the lens that I was viewing this through.

My concern is that I really think that if you recall all of our negotiations on intellectual property disclosure framework, I think we've really incorporated the kinds of balancing tests that GDPR requires and we've just put them in general principles that would be applied in each case and that provide a basis for either denying a request or agreeing to the request, notifying the registrant about the request and so forth. So, I think that's all kind of built in there.

I'm a bit troubled by the idea that if we add another layer here that we're imposing, I recognize that everybody has to comply with applicable law, so I don't object to this in principle, but I just think that we've already tried to accommodate that in how we set this intellectual property disclosure framework. So, that was my concern on it.

And again, if we're opening up this disclosure framework which was negotiated very intensively as everybody recalls over a long period of time, then does that mean ... We have other things we could bring to the table on improvements to the disclosure framework. Thanks.

AMY BIVINS:

Thank you, Steve. You're absolutely correct that the section does only address the disclosure frameworks and not more broadly [review] requests. I was having an issue trying to talk and read at the same time, so yes, you're correct. This is just about the IP and the LEA frameworks. Volker, your hand is raised. You can go ahead.

VOLKER GREIMANN:

Yes, thank you. Basically, I would disagree with Steve but only in one minor issue here. We are not adding anything, any new hurdles, any new requirements to the disclosure frameworks. Those are already there. I mean, local law applies whether we specify it or not. This just spells it out in a way that in a position that makes it clear that obviously if local law prohibits certain disclosures that are spelled out in the disclosure framework, they do not apply. This is the case whether we write this in here or not. That just makes it clear to anyone who reads this that this is actually the case.

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So, I'm sure that you're not suggesting that local law wouldn't apply because we have disclosure framework. I just say let's make it clear how this works. Local law always trumps anything that ICANN puts in the contract and therefore we should say that. Thank you.

AMY BIVINS:

Thank you, Volker. Does anyone else have comments on this? Okay, we can move on then to section 3.18. Actually, 3.18.2, we have an edit proposed by Volker and the edit is ... Let me scroll down just a second.

Section 3.18 generally relates to transfers. We haven't discussed this section very frequently in large part because we have a transfer policy issue to discuss after we go to public comment based on there was an issue that was referred to us by the GNSO Council, but there's no reason why we can't discuss this now as well.

So, we have a proposed edit from Volker. It was that providers should not be required to allow transfers to registrars where the provider has no agreement with that registrar as long as the customer data remains in the RDS at the time the transfer is requested.

Actually, I'm not sure if you're referring to the customer data or the provider data. I think probably the data that's in there at the time.

So, the feedback from Steve on that, Steve would like to hear more about why this edit is being proposed. So, Volker provided some additional feedback to the list on this, but I don't know, Volker, if you would like to explain on the call today or if any other registrar would

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like to speak to this today as to why you would support having this in here. Volker, your hand is raised. You can go ahead.

VOLKER GREIMANN:

Yes, thank you. The way that this is written right now means that when you are providing privacy services for a domain name and the customer wants to transfer the domain name to a registrar that the privacy services provider has no agreement with and therefore has no way of impacting what goes on with that domain name, has no [inaudible] ask, for example, the registrar to [inaudible] such an agreement exists, the domain name would transfer out of that new registrar and would remain with the contact data of the privacy service [inaudible] even though they might not have the ability to continue to [inaudible] customer, to ask to be removed from the WHOIS, stuff like that.

Therefore, there should be one specific ability to deny a transfer to another registrar which should occur when their data is still in the WHOIS.

I know this creates some [inaudible] issues where other providers might not allow their data in the WHOIS before transfer has occurs, but I think it's usually better to change the privacy-proxy service before the transfer occurs [inaudible] make that the requirement that the privacy-proxy service provider's data is no longer in the [inaudible] when the transfer occurs, rather than have it like [inaudible] the privacy service provider should have no ability to deny or hinder a request to transfer because that ultimately means they are the sponsoring registrant for a

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domain name that they have no control over anymore and that shouldn't be the case.

AMY BIVINS:

Thank you, Volker. Does anyone else in the room have thoughts about this now? We have Theo in the chat agreeing with Volker. Steve, your hand is raised. You can go ahead.

STEVE METALITZ:

Volker, that's helpful but I'm not sure that I agree with it because I don't understand how in this circumstance the provider is losing the ability to invoice the customer. The provider still has the information, the contact information, for the customer that has been collected at the time the person subscribed to the service. So, I wonder if is what you're suggesting, does that simply lock in the customer to one registrar even if they want to transfer to another registrar? I can understand that the registrar would prefer to deal with privacy-proxy services that it controls rather than ones it doesn't control, yes, but I'm not sure that what you suggest is the solution

And also, since we already have set aside some transfer issues to look at, after we get this out for public comment I kind of wonder whether this could also be [inaudible], rather than reopening a provision that I think has been pretty stable in this document for at least a year. Thanks.

AMY BIVINS:

Thanks, Steve. I'll note that Volker's hand is raised again and I will defer to you in just a second, Volker. Just to make clear, the history of this

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language, this is basically copied and pasted from the final report. It was written in the final report, I believe, as best practices, rather than explicit requirements, but we basically, when we were drafting this agreement copied and pasted and put this in here. So, that's where the language came from and I don't believe there have been any edits to this since the agreement was drafted. Volker, your hand is raised. You can go ahead.

VOLKER GREIMANN:

First of all, in response to that, best practices are just that. They shouldn't be requirements. They should be best practices. But, that set aside, Steve is mistaken when he says that the privacy-proxy service can't still continue to, for example, invoice because in most cases, except for the independent service providers, the services are invoiced through the registrar by the registrar for the service provider as part of the agreement that they have between themselves. Therefore, if [inaudible] registrar [inaudible] with key systems and I have a checkbox [inaudible] privacy service where I then agree to the terms of the [inaudible] third-party service and agree that key systems may invoice the privacy service fees from that registrant for the service duration as locked in. Then the domain is transferred out. If we, as a service provider, do not have the ability to lock that transfer, to prohibit that transfer, while [inaudible] still in there, the data could be in there forever with a registrar that does not cooperate, does not help us with invoicing and we have no banking details, no invoicing information from that registrant because that's information we simply did not need before and did not collect before.

The domain name is certainly not locked into a certain provider. You can always transfer out, provided that you change the information to a privacy service provider before you initiate the transfer. It's very easy to do that. The only change would be that we change to what currently is standard practice with the privacy service providers, which is as long as I am listed [inaudible] registrant of record, registered name holder, then I have the ability to choose which registrar the domain name is with, and if you want to have another person or another entity listed as a registrant of record, be my guest. Then you can transfer the domain name to wherever you want. That's the basic rules of this game that has been played for decades now.

AMY BIVINS:

Thanks, Volker, for adding that additional context. That was very helpful. Does anyone else have comments about this now? While we're waiting for any further hands, I will note that because this language was included in the final report as best practices and not as explicit requirements, this section you'll see it says should throughout as opposed to shall, so it's not necessarily a requirement in the contract either. So, just wanted to flag that as well. Does anyone else have further comments about this language? If not, Volker, I'll take this recommendation back to the legal team.

Okay. I'm not seeing any hands at this point. I'm expecting that this topic will likely continue to be discussed either now or when we revisit or return to the transfer policy issue later, after we get public comment. But, as you're thinking about this, if you have further feedback on this, please send it to the list.

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Our next proposed edit is in section 7.2. I'll scroll down to that. Just a moment.

So, section 7.2 concerns ICANN's handling of data that's provided – sorry, there's multiple uses of provider and provided, so it makes it complicated. It basically, the data that a provider gives to ICANN, this is how ICANN handles data.

The proposed edit here was from Volker and it was feedback for the legal team to please add data processing equivalency language indicating that for disclosure to happen, a requester should represent that the requestor uses similar data protection measures.

So, this section, because it's dealing with ICANN or addressing ICANN's handling of data versus the requestor, I don't know if the feedback is still relevant potentially. Volker, I don't know if you have further comments as far as whether you think that there should be similar language related to ICANN.

VOLKER GREIMANN: Sorry. What section are we on?

AMY BIVINS: Apologies. It's section 7.2 on page 33.

VOLKER GREIMANN: Basically, yes. Basically, the idea behind my request was that, yes, we would [inaudible] provide ICANN with the data provided we are legally

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allowed to do that and under the GDPR we must add [inaudible] recipient of any data that is transferred across borders to a country that is not in the EU. That they agree to certain terms and conditions. Basically, certify that they will handle that data in accordance with data protection laws. In this case, the GDPR requires. Basically, otherwise we would not legally be able to do so and therefore have a quagmire of either a quandary of [inaudible] unable to provide [inaudible] legal requirements.

So, basically, this tells ICANN to start building out a system that they will be able to guarantee that any data handed to them will be handled in an equivalent manner to what the data protection laws of the party that they are requesting the data from requires. I think that's easy to do and should be a basic requirement that we put in here. Basically, ICANN guarantees that data handling processes are equivalent to the data handling processes requirement based in the jurisdiction of the provider.

AMY BIVINS:

Okay. Thank you, Volker. I will take that back to the legal team and get their thoughts on that. Steve, your hand is raised. You can go ahead.

STEVE METALITZ:

Volker, is your concern here about data that's provided to ICANN or is it concerned about data that's provided to ICANN that ICANN subsequently discloses to a third party?

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VOLKER GREIMANN: Ultimately, both. Under the GDPR, the recipient of transfers of data must fulfill certain requirements that also apply to any subsequent parties that handle the data.

STEVE METALITZ: Okay. But, again, this provision is just about when the provider supplies data to ICANN, it doesn't obligates it [inaudible] supply data to ICANN, and presumably, if the provider thinks that supplying the data to ICANN would violate the applicable law, that maybe this is a place to [inaudible]. I don't know. It seems as though that issue could be dealt with by tweaking the first sentence that says the purpose for and conditions under which ICANN intends to use the data, that could encompass the things I think that are listed in your box there, in your comment there, as far as ICANN's use of the data.

Then, the last sentence basically says the same rule should be in effect with third party. So, I think the thrust of this may be there, but I won't comment on a particular change until we see that. But, I think the thrust of what you're trying to get at may already be here. Thanks.

AMY BIVINS: Thank you, Steve. Volker, do you have any further comments on that at this point? I'm sorry to put you on the spot, Volker. We can also continue to discuss this on the list.

VOLKER GREIMANN: Sure. Let's do it on the list, then.

AMY BIVINS:

Okay. Excellent. Thanks so much. The next set of comments that we have are related to specification two, which is down on page 47 of the agreement. The feedback that we have from Volker was that requesting that we review this specification. This specification, generally I think it's completely or nearly identical across ICANN agreements with registry operators and registrars, so the proposal was to include this here as well.

What this does is it specifies that where there's a consensus policy or a temporary policy that is adopted after the contract is executed, where the consensus or temporary policy is related to a requirement in the contract and supersedes the requirement, that the requirement of the contract is superseded by the new policy.

The feedback that we have from Volker was that we should edit this down to remove references to topics that aren't relevant to privacy and proxy services. We can take that feedback back to the legal team. Generally, where possible, the goal has been to try to keep the specification consistent across the contracts, but we can take another look and see if the legal team would support making edits.

Volker, your hand is raised. You can go ahead.

VOLKER GREIMANN:

Yes. Just to pick up one example. For example, the first one on the list that I have raised is when the consensus policy relates to one or more [inaudible], which is 1.2.5, [inaudible] of registry operations of registrars

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or resellers [inaudible] registry operations, [inaudible]. None of these apply to privacy-proxy service providers because by the nature of the accreditation and being separate company, they are not registrars, registry operators, resellers and none of the [inaudible] by the registrars and registry operations that the registrar and the registry apply directly to privacy-proxy service providers. They would apply, of course, to the registrar that's affiliated but not to the privacy-proxy service provider.

That's one example where it's nice to have some language. It would be nice to have some consistent, but they add no value because they actually will serve to confuse more than to [inaudible] because they are dealing with parties that are not party to this agreement and anything that happens under 1.2.5 in the compliance [inaudible] policies would by definition of what language in 1.2.5 says does not apply to privacy-proxy service providers directly at least, and therefore that language can be removed and should be removed. Anything that does not apply to privacy-proxy service providers has no business being in this contract. Thank you.

AMY BIVINS:

Thank you, Volker. Does anyone else in the room have comments about this? Okay. So, I will take that feedback back to the legal team and I'll get back to you with proposed next steps on that.

So, we had additional feedback in the agreement. We only have a couple of minutes left. But, the main substantive feedback that is left that we haven't discussed yet was related to specification 8, the data processing specification. To remind everyone, the recommendation

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generally has been to either remove specification 8 or make it less GDPR or EU focused.

Steve Metalitz had proposed that we add a certification requirement in specification 7 in place of specification 8. The legal team is considering that feedback. The team is discussing that I believe today, actually. So, I'm hoping I should have some feedback to be able to share with the group next week. This is a broader discussion that's requiring multiple members of the legal team, so that's why it's taking some time to go through that.

In terms of next steps ... Oh, okay. So, the other item that we wanted to bring to your attention for discussion, and we don't obviously have time to discuss it today. I raised it on the list. It's the possibility of potentially adding in a requirement in the contract that providers log requests from third-party requestors and disclosures of information to third-party requestors. It was asked on the list whether ICANN Org has a specific proposal on logging and we don't. We're asking the question, or at least as part of the context, I pointed it to a letter that ICANN Org received from the European Data Protection board relating to logging. Recommended that there be logging of request for non-public RDDS data. So, that's why we're asking the question to the group.

On the list this week, it would be great to hear your feedback about potentially having a logging requirement in this agreement. We don't have time to discuss it today, but on the list this week, if you can continue to think about that. If you have any feedback, let us know and we can also discuss it on our call next week.

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Does anyone have further feedback? We have some comments about pace, about feedback from the legal team. I will assure you I'm doing everything I can to move this through as quickly as possible. As you know, some of these issues are complicated. For some of these, it's requiring multiple members of the team, so we're having some timing challenges, but we're working through that and I'll get feedback as soon as I can.

Does anyone have further comments before we wrap up for today?

Seeing no hands on this, we can go ahead and wrap up this call today. I will provide an update to the group as quickly as I can about timing on getting some responses back from the legal team, and hopefully we'll be able to move this ahead relatively quickly.

Thanks so much for your active participation today and I hope you have a great rest of your day.

**[END OF TRANSCRIPTION]**