



ID Management Advisory Committee
Wednesday, September 17, 2014 1:00 p.m.
3 East, General Assembly Building

Senator John Watkins, chair of the ID Management Advisory Committee, called the meeting to order. He welcomed new Advisory Committee members Delegate Dave LaRock, Delegate Glenn Davis, and Senator Jennifer Wexton. Several interested parties were present at the meeting, and several more joined in the meeting via conference call.

Staff began by providing a brief history of the work of the Advisory Committee over the past few years, for the benefit of the members of the public as well as the new legislative members. The past work led to the submission of a draft bill presented by members of the private sector, which was included in the meeting materials for the meeting and is available on the JCOTS website. The draft attempted to address some issues raised by Advisory Committee discussions at the end of the 2013 Interim. The draft has thus far not been edited by legislative staff, and is presented to the Advisory Committee and interested parties for discussion of the concepts set forth in the proposal.

Senator Watkins called on Tim Reiniger, a consultant with FutureLaw, and one of the developers of the proposed draft. Mr. Reiniger explained that he had been working with Certipath on the draft, and that Verizon had presented some suggestions to improve upon the language. The policy of the draft is driven by the National Strategy for Trust Identities in Cyberspace ("National Strategy"), which is focused on creating a user-centric private marketplace. The National Strategy has found that one barrier to the creation of a robust market is uncertainty regarding liability, and the lack of a consistent framework -- although there is some disagreement about this. He noted that in August, Europe finalized new regulations for identities that also found the need for a common legal framework.

The draft proposal attempts to give Virginia the tools it needs to foster the creation of a digital identity marketplace. It provides definitions, it provides a framework that does not currently exist in the United States, and it attempts to address the unpredictable allocation of liability amongst credential providers. Mr. Reiniger believes that the states need to start moving on this issue. States are the traditional source of contract law, and

the proposal is based on contract. The states, he said, will be a major marketplace player.

In response to the assertion that the states will need to get involved, Delegate Davis asked if indeed the federal government wouldn't need to lead the way, for consistency purposes. He cited the federal development of the Children's Online Privacy Protection Act (COPPA), noting that an out-of-state company would need to adhere to potentially 50 different standards if other states got involved. Mr. Reiniger stated that the federal government is involved in health care, communications, banking, and other industries -- but contract law has traditionally been shaped by the states. Delegate Davis asked if something like the federal liability program used in the Federal Trade Commission's Safe Harbor program, where five organizations were authorized to provide verification of parental identification for children who were online, pursuant to COPPA. A representative from Certipath indicated that she believed this draft took that same approach.

Representatives from Verizon indicated that had suggested adding a new definition of an "identity proofer" to the draft, because most fraud occurs at the identity proofing-stage. The proofing process is often times split from the process of issuing a credential. For example, the United States State Department issues a person a passport, but a local court or post office reviewed the documentation that the individual presented to obtain the passport. A meeting participant also suggested that when providing immunity specifically to an identity provider, this should also be provided to the identity attribute provider. Staff will review how to best accomplish this.

Tom Smedinghoff, a partner with the lawfirm of Edwards Wildman in Chicago and chair of the American Bar Association's Federated Identity Management Legal Taskforce, said that he does not believe that "one size fits all" when it comes to the proposed legislation, and that these sorts of issues are traditionally addressed in contract. John Biccum, with Microsoft, said he agrees that issues limiting liability are generally addressed in contract, but that there is a benefit to having statutory law for identity management, because a relying party may not be a party to the trust framework. He gave an example of a private retailer relying on a Virginia driver's license to verify that an individual is 21 years of age and can legally purchase alcohol; that retailer never entered into a contract with the state.

Proponents of the legislation suggested that legislation is the right approach. By adopting legislation, Virginia would be encouraging businesses to locate in the Commonwealth. It will accelerate the adoption of online credentials, and it will accelerate e-government services.

Josh Heslinga, an Assistant Attorney General, said that the Office of the Attorney General has not position on the draft. However, it said it would be helpful to have a concrete example of how the legislation would work. He said he has concerns that the

draft is being described as "user-centric" because it appears to be focused more on the identity providers than the individual who holds the credential. He said he would like to hear from consumer groups and electronic privacy groups. Watkins followed-up that he would also like to know if the draft had any implications for the state as it relates to sovereign immunity.

The draft would task the Virginia Department of Motor Vehicles (DMV) with evaluating the trust frameworks. Mr. Biccum suggested that the draft might want to task DMV with finding a third-party that could evaluate the frameworks, instead of having to take on the task itself. It was noted that DMV was simply serving as a placeholder in the bill. Senator Watkins said that it would be necessary to speak with various Secretaries in the Governor's Office to determine where the best "home" for this function. Senator Watkins asked DMV to coordinate with the Secretary of Technology concerning responsibility.

In preparation for the next meeting, staff will work on the draft proposal. Tim Reiniger volunteered to put together some concrete examples, in response to Mr. Heslinga's concerns.

The meeting was adjourned. The next meeting will be on Monday, October 20 at 1:00 p.m. in the General Assembly Building, 3 East Conference Room.