ICANN
Transcription ICANN Barcelona
GNSO – EPDP Team Face to Face Meeting Session 1
Monday 20 October 2018 at 08:30 CEST
Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.
The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page
http://gnso.icann.org/en/group-activities/calendar

Kurt Pritz: Hi, everyone and welcome. First a note to our observers. Thanks very much for coming. Our agenda is to pretty much dive into our work in progress right where we left off in our last telephonic conference. So I apologize if you might lack the background you need to follow, but we do we do want to make this a working discussion and we apologize also for your lack of ability to participate in the session. But it's designed to be a session made up of members and we're complying with that requirement.

But everybody has access to the chat room. There is one public chat room and so we're all looking at the same thing. For those reasons - there's the AC room. So (unintelligible) the AC room sans chat. So there's no chat in the room today. So if you want to get online with your colleagues, use some other method. So you can hook that up right now.

Remember when you speak, say you name for the record so the transcript comes out clean, and crisp, and recognizable to those who read it. We'll be putting up in the AC room the documents to which we're referred throughout today. If you want to get a better view of those, we will also put up a link in the AC room so you can bring those documents right to your laptop and see them better.

So today is an important day. We're here to create some agreements. We're well familiar with the issues, the law. We have several tentative compromises

and agreements in place. It's time to publish - get around to publish the initial report that will memorialize those agreements. And so we want to do the hard and either really boring or really exciting work of specifying those agreements in written word so that they can be included in the report.

Before we get into that, I just want to go through today's agenda and our objectives for that. If you're looking in the AC room, the agenda is over on the left and it's scrollable. This is the welcome by me, and we will go through the agenda. The first step is there was request in our last meeting to see where we are vis-à-vis the initial report and what's a high level or general plan for assembling that report. So I've taken a shot at that listing the tasks that need to be done. So we can kind of stare at it and sloe those activities into the meetings we have here in Barcelona and then in the week or so after that, and plan for getting each task done.

You'll - well, I'll talk about that when I get that. So we'll talk about the high-level check on our work and the steps necessary for the report. And then we want to, as the schedule will show, when we discuss these issues, it's time to wrap them up in a state that's sufficient for an initial report. The first would be our Purpose B, which has to do with collecting data to make it available for disclosure to third parties who have a legitimate interest.

And as you know, this is probably the most important of the purposes that we've identified. We'll talk about that during the morning. During the afternoon, we'll talk about Purpose A, which is the purpose of collecting data so your customers' domain names work and we're far down the track with that one and have some renewed wording that will finish that off. So hopefully that's a short discussion.

And then I don't see it here but we want to go on to purpose C, which has to do with collecting data for contacts, technical and administrative contacts. So if there's time left, we'll talk then. And then at the end of the day, we'll talk about what the rest of the meeting is.

And I'd like to try to treat the rest of the meeting as sort of a blank canvas that we might spin off small groups here that have to go do something and those small groups can meet whenever they can and don't necessarily need to meet in one of these slots. But we'll - know what we'll know at the end of the day and the work that's left to be done, we'll schedule work for these remaining slots.

Note that on tomorrow or Monday, there's the high interest topic session where a number of us will get up, sit on a panel and tell people what we've done. I don't know if it's of such high interest but there you go. So that's the agenda. Are there - so we're going to focus on these most important purposes that we think if done will sort of unlock the rest of the tasks necessary to publish the initial report. Does anybody have any questions about the agenda before we start?

Great. So let's - I put together some slides to talk about what needs to be done to publish the initial report and it's sort of a grounds up look and see if you agree. But we've been so busy shoveling over the past few weeks, talking about all the details associated with each one of the purposes for processing data that we've developed and the data elements that are required for them, and the processing steps that are included and the legal basis for them that I thought it would be good to stick your head up.

So with a nod to the observers in the audience, we took the purposes for processing data, processing personal data in the initial report and reorganized them somewhat and created these purposes that are esoterically and seemingly randomly lettered. And so for each of these purposes, we've created a workbook that you'll see later. And so what I've done is map these -- next slide -- map these to the charter questions that are in our charter. So assuming that, which is a dangerous word, our final report will answer all the charter questions and by doing that, it will essentially comprise almost all of what we need for an initial report.

Once we finish the workbooks on these purposes, we'll have answered these charter questions. So that gets us far away onto the report. How far along are we on the worksheets? You know, it's been characterized to me anywhere from 50% to three quarters. Some of the remaining percentages is really difficult stuff, like Purpose B, which is what we're going to talk about today, but a lot of it is routinized, looking at that element, see which data elements belong, which don't, listing processing steps, things like that.

So in what's remaining there's a 20% really hard work and 80% important but more or less rote task. So once we finish the worksheets, we'll have finished all of these charter questions. And then if you go onto the next slide, we also formed some small groups, as you remember, to discuss the handling of legal versus natural purposes, the geographic basis for applying GDPR -- I can't even spell it -- to determine when contracted parties must comply with GDPR, most importantly when they need not to. And the definition of reasonable access. And those small teams have made considerable progress, but some more is made.

And if you can go onto the next slide, those small teams mapped to these charter questions. So there's essentially charter questions that attach to each one of those items, which is why small teams were created to discuss them. So completing the small group work will complete these initial report questions. And then there's some work at the end that we've determined to be less important. So if you go onto the next slide.

There's charter questions having to do with ICANN responsibilities that might result in joint controller agreements. Maybe that's what that applies to. There's the registry/registrar responsibilities in processing data, questions L and M, where we thought the temporary spec was much too prescriptive in nature. And I think if sent off into a corner, registrars and registrars would come up with appropriate wording that would govern their behavior in a GDPR compliant way.

And then there's ongoing operations of URS, UDRP, and transfers that are occurring right now under the GDPR regime so that we see that these are kind of already addressed. So these sections of the temporary specifications are probably fine, but might need tweaking. And then there's something called sunsetting of WHOIS with the RDAP and I don't know what the heck that means with our got my low-tech that means but these don't necessarily need to be done for the initial report because they're non-contentious and by and large already operating in a good way. So if we don't get to these, it will be fine. But if somebody wants to undertake these and amend the temporary specification to bring it in line with current practices that would be fine too.

So our roadmap for getting this done is on the next slide. So to me, we want to complete the worksheets for purposes A, B, and C. They're the primary ones and the ones with I would say some substantive holes and then that would essentially complete the discussion of all the purposes and all our worksheets. And then we were talking about this yesterday and what's left are all the data elements, and we really haven't taken a good look at those.

And I would propose, and I don't know what Gina thinks about this -- well, I do a little bit because we talked yesterday -- but maybe we break into two groups and each group takes four of the eight purposes and just goes through the data elements to make sure they're the appropriate data elements for that section. So we could - that's kind of a routinized task where we could divide up the work and maybe in a few hours finish the detail work on those purpose worksheets.

Then we need to complete the work on the small group proposals having to do with natural versus legal, et cetera, finish those, and maybe look at the other stuff. So blue here is our plenary sessions and gold -- I won't say baby poop brown -- would be work that we could do in small groups. And then convene in a plenary agreement.

So if you sort of agree with this, what we're going to do next is slot this work into the remaining sessions we have, and kind of do a go-forward plan for when we're going to deliver the initial report. The go-forward date is November 5 and we want to come as close to that as we can for obvious reasons.

So I think is that the last - oh, there's one more slide. So just to punch up the importance of this. Today and early this week, we want to complete the worksheets A, B, and C, if we can, those purposes and then complete the data elements of all workbooks and complete that small group work.

So that's completed worksheets I would say A and B is today's goal and then C and complete the data elements and complete the small group work hopefully in this meeting. Those are our objectives. Are there any questions about that and let me know if that's helpful or not in kind of mapping where we are in the work we're doing to the initial report requirements.

Amr?

Amr Elsadr: Thanks, Kurt. You mentioned that…

Kurt Pritz: Amr for the record.

Amr Elsadr: Yes, Amr from the non-commercial stakeholder group. Sorry. You mentioned that purposes A, B, and C were the ones we needed to wrap up today. I was wondering, weren't we also expecting some input from the registry stakeholder group on Purpose N? Did this come in? Did I miss it or is this still pending?

Kurt Pritz: So we will get to it and that will become part of the report. It's not on the most critical path but I'll make sure it's certainly included. Farzi?

Farzaneh Badiei: Farzaneh Badiei, non-commercial -- good morning, how are you? So I just wanted to say we have to discuss it before we put it in the report. So it's not - let's discuss it before we actually say whether we are going to put it in the report or not. Thank you. That was about Purpose N.

Marika Konings: Thanks. This is Marika. I think where N stands is that I think Kristina shared it with the list but we're still in the process of transforming it to the updated template. But I think at this stage, it's mainly focused as a registry purpose so I think that's why at this stage it may not be on the critical path. But you're absolutely right, if it is to be included, it needs to be reviewed and considered.

Kurt Pritz: So I'll say a few words and turn it over to Gina. So we're going to talk about - right. Okay, do you want to go? Gina?

Gina Bartlett: Good morning everyone, my name is Gina Bartlett and I work with the Consensus Building Institute. It's nice to see most of you again. I think there's a couple people who haven't been here before. So my role is to help work with you to achieve your goals today and as we've identified, today, we're going to really focus on Purpose B first. Then go to Purpose A and hopefully move to Purpose C.

Just a couple things. I'm going to - I want to provide a gentle reminder that what we're trying to do is develop recommendations as the team and we're sort of shifting to get to the initial report. So today is going to be a little bit different than the face-to-face in Los Angeles and the conference calls.

We're going to spend the morning on Purpose B but we're going to try to narrow down, identify where you're able to make recommendations and when we're not, we're going to document that for the initial report so the broader community is able to comment - provide the public comment to inform your further thinking on these issues.

I want to challenge everyone to really think about negotiating for mutual gain. I know that you have all signed onto this team in order to represent the interest of your constituents and that's incredibly valuable. But part of the reason why you have all of you sitting together around this table is to craft solutions and make recommendations that are responsive to your different interests.

I know in some cases it's incredibly difficult and in some cases it may not feel like there's opportunity for mutual gain. But we really need to work hard and see if we can develop proposals and refine the work that you've been doing in order to craft those recommendations. However, if we're not able to do that, we are today going to document those points, the different viewpoints, and then move onto the next purpose so that you can develop the initial report.

A couple just working agreements. We will periodically use caucuses. So if you feel the need, before you close in on a recommendation, to have a caucus and meet with you colleagues, we can call caucuses. We will use those strategically to vet solutions.

The other thing that I want to call out that we're going to do is on the legal basis, we all understand there's differing viewpoints on that. We know that for Purpose A, for the processing activity collection by the registrars that that's a 6.1-B, but we know that at the others they're at a minimum a 6.1-F.

And for each purpose, we're going to just note, if you think it's a 6.1-B we're going to note that for the initial report. We're not going to continue to discuss if it's a 6.1-B or a 6.1-F. Okay.

Lastly, I've been asked to encourage everyone to be as concise as possible. I know that there's a lot of strong feelings and great ideas in the room but we do have a lot of material to cover. And then finally, we're going to use the queue in the room visually and we ask you just put your card up if you want to

get in the thread. And we do have Thomas online, and so the staff will be monitoring if Thomas wants to get in online. Should we check Thomas to make sure - okay.

So those are the main working agreements for coming together today. Any questions or concerns about those? Okay. So before we dive into Purpose B, we wanted to just give an opportunity if anybody had any 30,000-foot ideas or high-level comments on the work that you're doing for all the purposes across. We just wanted to take a few minutes if anyone wanted to share any insights. And then we'll just shift to Purpose B. Any thoughts from anyone?

Emily, go ahead please. And I have to ask every time, just we have to say our name.

Emily Taylor: Thank you. Emily Taylor from the registrars group. I don't know if this is the moment to say it, but maybe as we are gathered together face-to-face, at this point where we're thinking about the next steps and the final report, and apologies if this comes across as a negative statement.

It's actually intended to spur us to use our time valuably towards a positive outcome is I get the sense that we're sort of somewhat down in the weeds in this project and that personally, speaking anyway, I'm finding it rather hard to understand where we are or why we're doing what we're doing, where it fits in with the bigger picture.

We're now at the stage where we do understand, I believe, what others have to say, where they're coming from, their legitimate points of view. And I don't think we all need to reiterate that. I think that we do understand that. So it's really to build on your point.

This is probably the point in the process now where we have to explore where are our points of difference, what happens if this process fails, if I can use the F word, and where are we broadly in agreement and where are there

major, major differences. And I think we know that but we're sort of - I feel that we're kind of - we're running a low level at the moment. So I hope that that's helpful.

Gina Bartlett: Thank you, Emily. It's actually documented. I actually have it on that flip chart. I can go flip it but it's documented in group theory that where people go, as it gets really messy, they diverge and then there's an area called the groan zone. I would say you're kind of there, you're in the groan zone, and then converge and you start converging.

And we're asking you to make that shift, Emily, today and go towards convergence and figure out where you can agree. Figure out where you're not able to and then benefit from the public input on the initial report to shape your thinking for the next stage.

Okay. So I guess we'll go ahead - any final comments on sort of the high level? Thank you. Good morning, Stephanie. Don't forget to say your name please.

Stephanie Perrin: Stephanie Perrin and apologies for being late. Maybe you've already covered this. Following Emily's intervention, I would just like to say that in my limited experience at ICANN, which would be five years and a half, not that I'm counting, we've been in the groan zone for that period.

So I mean I have looked at group theory in how to solve this problem and I think we're more like in peace in the Middle East, you know, the Palestinian-Jerusalem argument. That's a closer analogy.

Do you have any insight into how we get beyond that? This is not your average struggle. It's a 20-year struggle. Thanks.

Kurt Pritz: So I'll try to take a glass half full approach to that and I think today, and this morning when we're talking about Purpose B and making data available for

disclosure to third parties with a legitimate interest is sort of, if you look at the 52 charter questions we're supposed to answer, I think this is the one that people care the most about.

And in our Los Angeles meeting, we came to a compromise that was surprising to me that, and to read it, that we would provide for a lawful disclosure of registration data for third parties with legitimate interest to data that is already collected. And that we all agree that we want third parties with legitimate interests that predictable, lawful access and the EPDP policy must make that clear.

So we came to that agreement, which was great, and wrote a purpose for that and that's where we fell down a little bit. Because we had a very general purpose that we thought wasn't GDPR compliant. We made it a little bit specific. Benedict, who's not here, pointed out some flaws in that. So we spun around in the wording a little bit.

And I think the goal for this morning, to climb out of that 20-year hole, Stephanie, is to start with that compromise language that we had developed in Los Angeles and use that to develop a purpose that we think would be GDPR compliant, specific enough and narrow enough to pass muster there.

And we have. We have the wording that was developed by Benedict and then we have alternate wording that was developed by Alex. For me, of course, I don't care what the wording is but I care that we had this compromise and now, our job is to create a wording that is a purpose around that and to add that to our list of approved purposes.

So I think to find the one ladder out of the hole, I think this discussion about Purpose B is the most important thing and it's really the one we're all here for.

Gina Bartlett: Thanks, Kurt. Marc A, and then I'll go to James.

Marc Anderson: Thanks, Gina. Marc Anderson for the record. You asked for any thoughts from a 30,000-foot view and I think that's sort of an appropriate question to ask at this phase. I was reflecting a little bit on why we're all here, why we all ended up in this room. And it goes back to really the fact that GDPR came about and left us in a situation where the status quo couldn't be maintained.

And ICANN was or has been committed to maintaining WHOIS to the greatest extent possible. I think Trang and Dan, you would back me up on that one. I think ICANN Org has made statements that they're committed to maintaining the status quo to the greatest extent possible.

And so they passed the temporary specification with the goal in mind of maintaining the status quo to the greatest extent possible, but providing contracted parties with a window or tools in order to comply with applicable law. And so that was a stopgap measure. That was a mandate for the existing situation. And so our task, the task that all of us have come together for, is to figure out how to take that Band-Aid and make it a permanent solution.

And so that's sort of the 30,000-foot view. We have this legacy WHOIS system that doesn't fit within existing legal framework that we all have to deal with. And so we need a new framework in order to give contracted parties the ability or the flexibility to comply with local law while providing this WHOIS service or something similar to that.

And so maybe to your question, 30,000-foot view, right, that's what we're all here to do is to find what that answer is. And hopefully, we'll get to recommendations at this that will go into the initial report for accomplishing that.

Gina Bartlett: Thank you, Marc. James?

James Bladel: Hi, thanks. James speaking and just great words and thoughts from everyone so far. I just want to point out that from the perspective of looking at these purposes and even things like the small group recommendations, specificity right now appears to be the enemy of consensus.

I think that we can kind of start to gel around some general high-level topics, but when we start to dive in and try to make them perfect is when things fall apart. And I feel like, to Marc's point, we were going from open wound to Band-Aid and trying to put some scar tissue over this thing.

I think that we need to be in triage mode at this meeting, in this face-to-face, is we need to start looking at those things that we can agree on. I think fewer actionable recommendations are preferable to comprehensive recommendations that result in something that's DOA when it gets to Counsel and then you've got half the constituencies voting it down and it just falls apart.

So my thought for the group is if we're going to focus on how to use our time is that we try to stick to the general high-level principles and if we can't get there right away, more time is not going to result in higher quality recommendation. Let's check the box, let's flag it, and let's move on. Because I'm more concerned about the calendar than anything at this point and if we start to get into the early part of next year and we don't have a really clear direction of where we're going to land then everybody is going to start going into a bunker and this thing is over.

So that's just my thoughts but I'm looking forward to making some progress today.

Gina Bartlett: Thanks, James. I've got Alan Woods and then I'll come to Alan Greenberg, and then I'll come back to you, Stephanie.

Alan Woods: Alan Woods for the record. I just want to be in the realms of what Emily was saying earlier. I don't want to sound this as being a negative thing, but can we be clear somewhat on the language that we're using as well. And that is that Purpose B is not actually the most important purpose that we have here. Purpose B just happens to be the most contentious, and in my view, because it is a legal obligation at the end of the day, it is probably the least important of the purposes. Because at the end of the day, regardless of what we agree here, we have a legal obligation in order to provide access and this is the - it's more the workhorse of this entire group is Purpose B.

So I just want to be clear that there are more important purposes that we should be much more focused on. I think Purpose B is a misnomer. We're spending a lot of time on it and it's unnecessary. And it's in the way of us achieving our goals. So if we want to get out of the groan zone, I think Purpose B is one of those ones that we need to get rid of. And by get rid of, I mean get through, not get rid of, just to be clear on that one, get through it and then move on to the actual task of this group would be great.

Gina Bartlett: Okay. I think there's differing viewpoints on the importance of Purpose B, but we hear what you say, Alan. And the goal is to take it through the morning and then shift gears.

Alan Woods: That's the whole point. What we're doing here is we're trying to allow the contracted parties and ICANN to register domain names. That is our true core purpose and we need to focus on that. So it's not necessarily about compromise in that instance. It's about let's fix the system so we can continue on doing our jobs on a day-to-day basis and then when push comes to shove, we will have to figure out a way of making sure, and we agreed this in small team 3, we have to figure out a way of making the access much more open and obvious to the people who want it. But again, that's outside of the scope of what we're doing, how we actually give access and what are the choices.

So we just need to be very careful because I think we're just getting so bogged down in that.

Gina Bartlett: Thanks, Alan. Alan G and then I'll come back to Stephanie.

Alan Greenberg: Thank you. I had a comment on what James said and it's a great philosophy but we tried it in LA with a general statement and then we unwound it almost completely because we said it was too general and therefore we couldn't address the specific needs that some people felt were important. So how we get that right balance of let's not agonize over the wording but make sure we don't rewind it and start over again next time is getting just a little bit frustrating.

Gina Bartlett: Alan. Go ahead, Stephanie.

Stephanie Perrin: Stephanie Perrin for the record and I don't mean to pick up on your language but I notice you're already saying come back to Stephanie as if I have been talking too much already.

Gina Bartlett: So sorry.

Stephanie Perrin: It's okay but if you are counting interventions, do let us know. I wanted to pick up on the point that James raised about agreement on broad principles and moving on. I'd like to move on too, but I think one of our problems, as I said in our last meeting, is that we come up with imprecise language that we all think feels okay and what we're looking for, and I'm not a lawyer, is language that allows for legal precision about what exactly we're going to continue releasing and what we're not going to continue releasing.

And the important point that we keep raising in NCSG is that life is not going to go on post-GDPR because of the fines in the same manner that it has. And the real point of us coming together today is for some folks to give some

territory and acknowledge that. And I don't think we've seen any willingness to acknowledge that. So I think that's what we ought to be tackling.

Gina Bartlett: Thanks, everyone. Any final comments from the big picture viewpoint? Okay. So we're going to go ahead and with those lenses and filters, we're going to move to Purpose B. What we're going to do is I'm going to ask Kurt to introduce the topic one more time, kind of highlight the high level.

Then we put on your desk, Berry combined the different language that is being circulated. We had two workbooks out there and our task, what we're trying to do this morning is to finalize -- I'm sorry, finalize isn't the right word -- to refine the purpose language where we have one purpose for B.

Then on the lawfulness of processing task, we want to confirm the 6.1 - we want to confirm lawful basis, excuse me, especially for collection and transmission.

And then we are going to defer the data elements matrix to deal with all of those together, as Kurt mentioned. So our focus is going to be on the language for the purpose and then the lawfulness of processing test primarily focused on collection and transmission. So Kurt, do you want to introduce the topic and then I'm going to have Berry walk us through the refined worksheet so everybody can track where that's at.

Kurt Pritz: Thanks very much, Gina, and I think I've said most of what I want to say. I just want to acknowledge Alan's comment and with regard to relative importance. And actually, I'm feeling a little bit cocky about some of the ones you might feel that are a little bit more important when we get onto Purpose A. Some of our later email interventions made me feel that the rest of the purposes are far along.

So again, I recall or high level compromise that James didn't allude to but I'll climb on his comment to say that we had high level language and want to use

this session to just translate that into languages that stand up as a purpose that would be passed upon by a data privacy authority.

So you know that we've developed these workbooks that started out as a giant matrix, to get into some of the detail that James talked about, and we refined it into these worksheets. And then as we understood, there are many processing steps. We had to change this worksheet. We had multiple inputs on this purpose. So I'm going to ask Berry to review for us the document you're looking at, the worksheet having to do with Purpose B and the latest amendments made to that.

Berry Cobb: Thank you, Kurt. Berry Cobb for the record. One thing I will point out and I imagine the meeting staff behind this will appreciate this. I know that the distance from your mouth to the mic is kind of far given the width of the table, but we ask that you don't move the mics because they're aligned with the cameras and smile, you're on candid camera when you speak.

So with that, the worksheet that you have or at least the printed versions that's in front of you, first, I'll point out that in the Adobe Connect room there's a link to the wiki page that is storing all of our workbook documents. For A, B, and C that we'll be reviewing today, there's a redline and a clean form. What we had printed out for you to take notes on and that kind of stuff is just the clean version.

But I do invite you to also pull up the soft or electronic version of the redline because at this point, what I'm trying to do is maintain - I guess I really like to use the phrase chain of custody. But we really want to highlight who has introduced what kind of concept within the workbook itself.

And there's a lot comments out to the right that will highlight certain comments as to who was the original author or concept, where it came from, and perhaps some color commentary that may support why that particular language was included in the document itself.

Next, so again, as Kurt mentioned, you know, these workbooks have evolved immensely since we first started in LA and we - and Thomas and Farzaneh had created the Excel spreadsheet version.

This workbook that you have in front of you now is still far from finished. Obviously, there's - we're still seeking agreement on text and that kind of stuff. But I think the text you're reading in there is also a compilation of everything that's occurred up to this point.

So you'll recall that we broke out into small teams in LA and so there were some initial observations or notes that were taken down in the workbook. Then since then we've converted to a different version, or template, or style of these workbooks. And then secondarily, there's also, which mostly the reason why I'm explaining here is there is text on the printed version that's in black and that's kind of denoted as the Benedict version. And the text denoted in red is the Alex version.

And I don't mean to single out any one individual but those were the persons that more or less submitted the latest examples, which we will be walking through. So hopefully that distinction, and I hope there's no offense to the use of the color red, but it would seem to had it provided the most contrast between the two.

As Gina mentioned, we're going to - and as I presented last week in the slide, we're really trying to start at the surface and drill our way down. So it's important that we try to come up with some compromise language about the purpose, get some kind of general agreement that would allow us to dive or drill a little bit deeper that gets into the processing activities. And again, there's typically at least going to be four that we're going to be concerned with -- collection, transmission publication or disclosure, and retention.

And as Gina also mentioned then drilling down even further are the data elements. So we won't be discussing those today in detail, but don't ignore them either in terms of your dialogue because as this new template is structured, we will be creating an inventory of what those data elements are going to be required or optional, or not required for each one of the processing activity steps. So definitely keep those in mind and then of course we will circle back later and kind of address those comprehensively when we get there.

So I think that's all I have for now and Kurt or Gina.

Kurt Pritz: So I just want to interject, especially given James' intervention about complexity and detail that each chapter here, each section actually will plop into our initial report. It's a requirement specified by the charter questions of our initial report. And that's why what I would call the rich detail in this workbook is necessary for our report. Thanks, Berry. Go ahead, Kavouss.

Kavouss Arasteh: Thank you and good morning to all. Still I'm not sure how you want to deal with this document. Usually, in dealing with the document, first, there would be a presentation. Second, there would general comments and third, you go section by section and on each section we also receive some comments. But at the end, there should be concrete suggestions and the concrete suggestion would be put into the discussions and we decide on that before we go forward.

Otherwise, all of us, except me, you're all very capable people. You can talk, and talk, and talk forever. You're a knowledgeable person, vast experience, and all of you are very, very respected and accepted by (unintelligible). Time is of essence. You need to do something. I talked to the Chair this morning. Objective of this meeting, at the end of this meeting, on Thursday afternoon, evening, whatever, we should have something to be effective covering all the way from different distances and so on and so forth.

And the issue is not who is right and who is wrong. The issue is to have consensus. Everybody is right (unintelligible) but we should have a general understanding. So I suggest kindly explain for me, maybe I am behind every other thing, that how you want to proceed with the, I'll call the examination of this document. I suggest section by section, and I suggest as I requested if it is acceptable. Thank you.

Gina Bartlett: Thank you, Kavouss. The plan was to start with the purpose language. So we are going to move through it. And so thanks for that reminder. So the proposal is to start with the purpose language. I see Lindsay is in the thread - oh, I'm sorry, Kristina, excuse me. Kristina. I apologize. So I'll go to her. And then I'll capture what I understand the key issues are and then we're going to try to get language on the purpose. Kristina?

Kristina Rosette: Kristina Rosette, registry stakeholder group. I don't want us to get sidetracked on this, but I do just want to flag that without having a redline, I can't be 100% certain but it looks fairly clear that, to me at least, that the vast majority of the language that was in the joint contracted parties house submission on Purpose B has been dropped from this and it would be helpful to understand at some point why that is and why it's been replaced with language from the IPC and from someone who on his own acknowledgement doesn't actually represent the views of the advisory committee that he's here participating for. Thank you.

Gina Bartlett: We're just trying to figure out who is the best person to respond.

Kristina Rosette: To be clear, I'm happy to kind of table it and we can get an answer later. I just wanted to make sure that the question had been raised.

So this is Marika.   So my understanding is where we left it off, so the registry/registrar team presented the data elements workbook for Purpose B that was then discussed in the group meeting and I think you kind of as well provided feedback that the original language was maybe not specific enough. And I

think that then resulted in a small team, which Benedict was one of those people, coming together and I think on the mailing list work on some language. I during the meeting it was already referenced that some of this - that the 1, 2, 3 points I think came from the CIO website, the U.K. data protection commissioner. And I think it was suggested that that might provide more specificity to the purpose statement. And I think that's how that evolved. At least that's my recollection but if that is wrong. But I think again, this latest version comes out from that small team following the meeting, which the registry/registrar team presented the data element workbook and based on that conversation. That's at least from a staff understanding where that was left.

But if it's helpful to bring that - the original because I think the original one was actually where we started in Los Angeles. But if I recall well, I think some felt that that was too general to serve as a purpose statement and more specificity needed to be added, which I think is what the first one aimed to do.

Kurt Pritz: I think that's - so Kristina, I just wanted to confirm the language to which you're referring. Was that the very last language that we left Los Angeles with in that purpose that was more or less general? Or was it the one that added stability and security to the end of it?

Kristina Rosette: No, and that's -- excuse me, Kristina Rosette. No, it wasn't but it was the language - the language that we worked from was in the language that was in the worksheet that was sent to us.

Kurt Pritz: Okay. Yes. So we can recover that.

Gina Bartlett: So Alex, I was actually going to come to you first. I think that the remaining issues that - the lingering issues that led to the new language in both cases is the links to the ICANN mission and then a concern expressed from IP that IP owners do their own policing. And the black text, these first purpose didn't

quite capture the need to act before the possibility - before criminal misconduct.

So I just wanted to come to you actually first, Alex, on the language. If you could speak to the idea for the second proposal. And I know that they were kind of developed in parallel. But if you could just help us understand that so that we can kind of work through the language that would be great.

Alex Deacon: Yes, thanks Gina. This is Alex. I think like many of us in the room, there was a lot of different Purpose Balance sheet being discussed, right. And before LA, during LA we perhaps had three, by the end of the week maybe four different purposes.

To answer Kristina's question, I think the reason why the registry and the registrar details aren't in this document is because this is the ICANN Purpose B versus the registry and registrar Purpose B, which I think Alan presented on the call a few weeks ago.

When I get into my red text, I think we were assuming that that purpose would still exist in some form, the registry, and the registrar purpose. Because what I've written kind of relies - will rely on that at some point. The reason why I submitted this purpose on Wednesday, the ICANN purpose, was based on the agreement we had in LA, which was basically by the end of the week, the registries and registrars would go and prepare a purpose B from a registry and a registrar point of view. And then at that point, once we kind of understood kind of where they were, and I believe that's still a work in progress, the registry and the registrar Purpose B. No, it's not?

Sorry, let me ask that question. Is that still a work in progress or not?

Emily Taylor: So can I just come in on that?

Gina Bartlett: Yes, and I'm wondering if we can try to just shift and work with the language. But go ahead, Emily.

Emily Taylor: No. We spent an entire meeting with Alan taking the group through it.

Alex Deacon: Thank you. I'm glad that was clarified. So what I did was - so, I'm sorry, Gina, so how do you want me to attack this?

Gina Bartlett: So I guess what we were hoping as a team, I'm sorry that there was some lost language that folks were hoping to have in the room today. Is that the situation? Go ahead.

Emily Taylor: Well, it just sort of highlights the point really. It says lost language. It's sort of why are we doing the work? You know, Alan and I spent hours and hours doing that. It doesn't really matter because it's just lost in the pool of hours, and hours, and hours. But if the document that we're now presented with actually loses that language then it makes us question what we're wasting our time for.

Gina Bartlett: So what we're going to do is get that language and get it on the screen. We'll put it in and I think we'll have three purposes that we have as our example, potential purposes. And then I think the task at hand is to settle on a purpose, the purpose language. So if you'll just bear with us for a moment. Everyone has these two sets of language in front of you and we're going to get the third, the original one back up here so you all can look at it.

                   So I think the goal of this moment is to try to settle on the language for the purpose. So Alex, if you wanted to speak to what led you to craft the language and what you feel is missing from the other pieces, I think that would be helpful for people to understand. And then I see Mark S., and I'll come to you. Does that work?

Alex Deacon: Yes. So again, I think what I tried to do was to fill out this worksheet as an ICANN purpose, a purpose for access. I did like what Benedict wrote, but as I mentioned in the email, there were some issues that I had with it. As we had discussed earlier, we had gone back and forth around kind of very general-purpose statement and I think it's important that we get specific, especially with regard to who may get access to this data as required by GDPR. And hence the wording, well, this is not - this is the registry and registrar purpose, right, but hence the wording in red here, the printout that we all have, at least those around the table.

And you'll see that text is essentially the text that was agreed at some point in LA with more specifics. So that's a high-level kind of background as to why I came up with this. There was a group of us working on this and we wanted to present it for consideration and discussion this week. And then in the body of the document is we went through and we tried to fill out the details. I'm happy to go through that at some point or now, however you feel is the best use of time.

Gina Bartlett: I think I've got some folks in the queue on the purpose language. So maybe we'll pause there, Alex, is that's okay. So I have Mark S., Farzaneh, Hadia, and Kristina. Okay. No Kristina. Okay Mark?

Mark Svancarek: Mark Svancarek. I just wanted to comment, and maybe it's moot at this point, we've moved on a little bit to Emily's comment. I don't believe there's any lost language because as Alex pointed out, ICANN purposes are different from contracted party purposes and it's a different worksheet. So please don't feel like we've thrown away that work. It was a good presentation on the last meeting. So I just wanted to say that. And of course, I agree with Alex that although I agree with almost all of Benedict's language, there is a question, how is fraud prevention defined for instance, depending on how that works and how that embraces various copyright, trademark, and IP issues. Maybe we can support it, maybe we can't. This is one of those issues where you try

to have language that is specific enough and not too specific. And that's the challenge.

Gina Bartlett: And Mark, how would you define the fraud prevention so that it does address the key issues that you're identifying?

Mark Svancarek: Well, I don't have any language sitting in my head right now. So if you could give me a moment to formulate it, I would appreciate it.

Gina Bartlett: No problem. Thank you. Farzaneh?

Farzaneh Badiei: Thank you, Gina. Farzaneh Badiei speaking, non-commercial stakeholder group. I am - so in our meeting in LA at the end of the meeting, we had agreed, I mean not agreed but we discussed having access as the registries, registrars purposes without putting it in ICANN purpose.

Now, I know that that we did not really agree on that and people wanted to go back to their stakeholder groups to discuss. So I am assuming now that we are putting access both in ICANN purpose and registries/registrars purpose, which I totally disagree with. And the problem with these languages, both of them, is that it gives ICANN a role that is actually not in its bylaws. ICANN is not to facilitate lawful access or maintain or, like, also involve with the disclosure of existing registration data.

ICANN should develop, coordinate policy, and implement them with regard to those. And I think it's also dangerous to just put in G1 and like the annexes without putting the language of the bylaws. The bylaws are very specific when they talk about ICANN mission. ICANN mission is not to facilitate and nor to maintain lawful access. And also, what I see from Benedict's language is very - I mean security, stability, resiliency is about technical issues. It does not put in other interests and I totally disagree with the other language that Alex came up with.

And sorry, I'm going on and on. Am I supposed to be talking about the language now?

Gina Bartlett: The purpose language, yes.

Farzaneh Badiei: So these are, like, the points that - and also I hear that the intellectual property, they want to police the WHOIS data and look at whether the domain name registrants are in violation of intellectual property rights. I do not think this is the right method to enforce intellectual property, to police WHOIS and have access to personal information of domain name registrants to just in case to see whether intellectual property has been violated or if you have the assumption that it has been violated.

And I think that's just you have the right method, which is UDRP, to go and get the - and there has to be due process for the domain name registrants. You should not just have access because you have the impression that your intellectual property has been violated. Thank you.

Gina Bartlett: Thank you. Let's see. Hadia?

Hadia Elminiawi: Hadia Elminiawi for the record. So I have mainly two points here. First, the difference between the language in black and the language in red. It's mainly that the language in black uses words mentioned in the GDPR. So it mainly refers to recitals 47, 49, and 50 of the GDPR. So it uses GDPR language. While the purpose in red uses language that is more used by the ICANN community, by registrants, end users. So that's mainly the difference that I see between those languages.

And then going to Farzi's comment, maintaining the security, stability, and resiliency of the domain name system is not within ICANN mission. Actually, ICANN's mission strictly mentions the security, and stability, and resiliency of the domain name system. And the EPDP letter to ICANN Board on the 5th of

July did actually acknowledge that ICANN's mission goes beyond the technical aspect of the security and stability of the DNS.

So if we look at the purpose in black, fraud prevention, that language comes from recital 47 of the GDPR. And I would say that fraud prevention does cover consumer protection and potential or alleged intellectual property violations. Network and information security, well, the recital directly refers to DNS abuse as one of the aspects of that. As for number three, I'm not sure it should be more of the law enforcement people or cybercrime people who can speak about this. But yes, the difference between both is not huge.

But I would say starting the purpose with maintaining the security, stability, and resiliency of the domain name system does link it directly to ICANN's mission, while starting it with facilitate lawful acts is, while some might argue that this does not really fall within ICANN's mission. But anyway, I do see that both purposes lead to the same result. Thank you.

Gina Bartlett: Okay, Farzaneh, but can you keep it brief because I have about 20 people in the queue?

Farzaneh Badiei: Yes, Farzaneh Badiei, non-commercial stakeholder group. Sorry, I have to correct the record. Hadia, multiple times says that I said something that I did not say. I did not say that security, stability, resiliency is not within ICANN mission. I have read the bylaws and I know it is. But it is technical and also, there is another thing that I keep hearing. The European Data Protection Board does not set ICANN mission. So if they say, okay, so it might not be technical or non-technical. They are not the ones who set ICANN mission and it is security, stability, and resiliency has to be interpreted in technical and limited technical - have limited technical definition to be in ICANN bylaws and not be in violation of ICANN bylaws.

This is not where we actually should discuss security, stability, and resiliency, and what its meaning is. It has a totally technical meaning and it does not have - it does not include intellectual property. Thanks.

Gina Bartlett: Thank you for the clarification, Farzaneh. Kurt is going to just jump in and then I'll go to the queue. I've got a long queue.

Kurt Pritz: So I think the question for us is which language among these, or which subset of all the languages will get us to where we want. And that is that under certain circumstances, third parties with legitimate interests will have access to the WHOIS data that is currently collected, no more no less. And those certain circumstances are going to be determined when we get to the access discussion. But right now, we're trying to form a purpose that will provide access to the existing dataset under those certain circumstances.

So which of this language works for us and doesn't work for us.

Gina Bartlett: Thank you, Kurt. That's the question I'd like to answer in the queue. Okay. That's the question we're focused on. I've got Ashley, Georgios, Alan W., Tatiana, Mark S., Kavouss, Stephanie, and Diane. Just so you know I've got you in the queue. Ashley?

Ashley Heineman: Thank you. Ashley Heineman with the GAC. I just wanted, well, to respond specifically to the question. I'm looking at the language in black, which is I believe what Benedict and others have put together. And I think this is looking much closer to at least what I hoped we could all agree to.

I think what is missing that I think could help the situation in terms of people's understanding of whether or not this is an ICANN purpose is the world enable or coordinate, to use a word that is specific to the ICANN bylaws. So something along the lines of maintaining the security, stability, and resiliency of the domain name system. This will involve enabling legitimate uses by third parties for the following to continue on. And using that specific language

I just put forward, this is actually the same language that was actually included in the European Data Protection Board's letter, the last letter sent to ICANN. So I think as we're pulling from things that are existent and tied to the GDPR and those authorities.

Also, what I like about this purpose is the fact that it references very specifically language that comes directly from GDPR. It is including text specifically from recital 47, recital 49, and recital 50. So I think that is helpful here. But again, I just want to make it clear that this is not about the actual act of providing access. We've all agreed that's for a later conversation. This is for enabling and that is why quite a few of us here believe this is a strong ICANN purpose. Because at the end of the day, this is enabling something. Thank you.

Gina Bartlett: Thanks for that, Ashley. Really appreciate it. Georgios?

Georgios Tselentis: Yes, Georgios Tselentis also from the GAC. Ashley covered many of the things but I think just to remind, all these things were discussed in detail in LA. We were persisting on the purpose that ICANN's purpose is about enabling and it's not about other things. So if I want to try to be also on the text that we have in black here. So I hope that there is consensus in the group for the first sentence, that according to the bylaws, we have the text there that is agreed by everybody.

And then we can go and build upon that. To the question that was about the fraud prevention, so 1, 2, 3 that is in the first paragraph, I think we can see still this as fraud prevention that is related again to the DNS. It's about whether DNS is to a certain extent effecting this fraud prevention or what happens there is effecting the security and stability. And then 1, 2, 3 is referring to the first sentence. So it is not about general things. It is whether DNS is, to a certain extent, a tool or something about performing fraud or effecting the security or having to do with criminal acts that are related to the DNS.

So if we make the link to the third part of the first paragraph and to the first, I think we have a very clear line.

Gina Bartlett: Thanks, Georgios. I'm going to keep through the queue and we have had an amendment that on the black text, this will involve enabling the disclosure. So if you could comment on that along the way that would be great. Alan?

Alan Woods: Thank you, Alan Woods for the record. So the question asked is what language will allow us to give access and you know my stance on this. The language is Article 6.1-S because it's a legal obligation. But that aside, I want to actually just suggest something, take a slight interesting take on this. And again, this comes back to something that I talked about on the call when we went through Purpose B.

Can we - I know this is me taking the reins of almost a pseudo-chair for a second, and apologies, but can we just maybe do a little survey of the room, just to make sure that people on the page as to what we're talking about. Are we talking about a purpose, as in a purpose that ICANN as ICANN may have to protect the domain name system? Or are we talking about the capital P purpose, which is the legal purpose under GDPR and that's what we're discussing as well?

So I think it would be illustrative just to see how many people are on completely different pages. Because personally, I can see it as a small purpose, absolutely. I have no problem. It's an objective of ICANN, as Kristina thankfully helped me here, it's an objective of ICANN. Yes, absolutely. But if we're talking about the distinct concept of a legal purpose under GDPR, we need to be clear that we're all talking and focusing on that one same goal. So if we could just do that, it might show why we're having this back and forth maybe.

Kurt Pritz: Well, I'm the pseudo-chair here but I want a clarification. ICANN have a purpose, it can have any purpose it wants. It just says this is my purpose. It doesn't make it legal. What makes it legal is now, we fashion words around it that are GDPR compliant and then that legalness is tested when somebody tries to get access to that data that that party has a legitimate interest that's not overcome by the rights of others.

So ICANN can claim a purpose and then what we'll do when parties try to claim access, that's when the legality of it is tested.

Alan Woods: So Alan once again. Yes, and I agree, but that was kind of the point of when I went through Purpose B and I was definitely with my head in my hands while doing this. Because I went through the legal purpose and I went through question by question. And my understanding at the end of it was, yes, it is an objective of ICANN but it's not really coming up to muster when you're applying the legal standard of what a purpose is under the GDPR.

I think we are - I don't think anybody at this table disagrees that ICANN does not rightfully claim this in their bylaws, but just because it's in the bylaws doesn't mean that the DPAs would come and say, hey, that's a perfect purpose, and well stated, and you can process data based on that purpose, ICANN. I still think if the legal test was being applied, we are still not at a place where it would pass. Because - and I'm not going to go any further than that because I know people are probably taking me as being stopping and blocking this. I'm not. I just want us to get past this concept between the small P, which is an objective, and the big P, which is the legal obligation.

Gina Bartlett: Tatiana?

Tatiana Tropina: Thank you very much. Tatiana Tropina, NCSG alternate for Milton Mueller for a few hours. So looking at the language, I think that Farzaneh already made an intervention on the meta level but I want to go to the language itself. So I have a problem with how it - what ICANN should be doing is outlined

both in the red and green language. I do not understand what facilitate means in this document. It is just really too broad and too vague. What does it mean? How far it goes? What kind of obligation it includes, facilitate. So does it mean kind of provide - bring parties together or whatever. So this is the first comment.

Secondly, in the red language. I think that the word in third party interest including those is just again too broad and too vague for me as for a lawyer. Because this language has absolutely no borders. Then potential or alleged intellectual property violations. Again, it's just really too broad, especially if this is going to be lumped in with law enforcement and consumer protection. Then again, I'm just going step by step for the language itself without kind of meta level of concept, cybercrime. I'm a lawyer who is working in the field of cybercrime. It is not a legal term of ours. Cybercrime is not defined any way. It's a basket of different criminal acts.

So I believe that if we will go with the cybercrime language anyway, somewhere, it should be either criminal investigation (unintelligible) law enforcement anyway, or any type of crime. Because any type of crime leaves digital traces. It simply makes no sense to say cybercrime.

And I want to - my last point is to what Hadia said about fraud prevention. Maybe I'll go to (unintelligible) intellectual property violations. No, it doesn't cover intellectual property violations I believe because many of them are not even criminal. Most of the countries criminalize intellectual property violations only when done on the large scale. In most of the cases, it is actually serial acts, which entail another type of responsibility, not criminal responsibility.

I think this is basically all from me. Thank you.

Gina Bartlett: Tatiana. Alan, we were just chatting that we didn't ask for your vote. Did you just want a sign of hands if it's an objective or if it's a big capital P purpose? Was that the question?

Kurt Pritz: So I'm really sorry, I'm not clear on the question. So if you want to restate it, then I'd be fine.

Alan Woods: Sure. The question is, well, in order to work for a show of hands is are we talking about - how do you do with a share of hands? Okay, people who believe that we're talking about a general purpose of ICANN as is stated in their bylaws should show? No. Maybe somebody else could probably put it better.

Gina Bartlett: Ashley was going to help with this.

Ashley Heineman: Well, I don't know if I'm going to help. I'll try. I don't think it's fair to ask that question right now because we don't know how you're defining a legal basis or a legal whatever the word we're looking for. Because I think it's being looked at very narrowly. I would like to see the recitals or whatever references to the GDPR because it's actually in their quite frequently and I want to make sure that we're all working from the same definition. And also to be very careful and whatever we're talking about here is applied to every purpose that we're talking about.

Because I think that we're being very selective in what's convenient and that we need to be fair and across the board here. Thank you.

Gina Bartlett: I'm going to keep going in the queue if that's all right? Okay. Mark S.

Mark Svancarek: Mark Svancarek. My comments are related to Tatiana's intervention but really, I'd like to correct the record for Farzaneh's intervention two interventions ago. So sorry if I'm going backwards but I need to correct the

record. Because I think this is really based on a misunderstanding of what we're trying to do with this language.

So I will just give an example, something that Microsoft encounters frequently. We may encounter a site that is purporting to sell our software in a pirated manner. So if they're not using our trademark in the domain name, we would investigate this. At that point, we might find that this software has actually been cracked and is malware. That's a very common thing. Disassembling the malware, we may discover that it's part of a phishing scam and there are command-and-control points either expressed as IP addresses or as domain names.

Then we would like to do a reverse lookup and find out which other sites are registered to this name - to this registered name holder or similar contacts. So as you can see, an investigation may start in a very specific place related to copyright, trademark, or IP infringements and turn out to actually be related to cybercrime. So the way it was expressed before in the intervention was not correct and so I hope that this has clarified why we are seeking the language, the red language included on this workbook.

Kurt Pritz: And so what language in the red language is required that - if we're to adopt the black language, say, with Ashley's intervention, what's lacking in that that would prevent you from doing what you want to do?

Mark Svancarek: Okay, so Number 1, where it says fraud prevention, fraud prevention is not actually well defined and what we saw in LA was that agreements that were general then were thrown out in favor of much more narrow interpretations. So this language here, related to consumer protection, cybercrime, potential or alleged intellectual property violations, that's the sort of language we're looking for. It's more specific and it's a little bit broader.

Kavouss Arasteh: I think it is many, many meetings that people repeat, and repeat, and repeat something, which may be sort of misunderstanding. No one here had talk to

modify, or change, or amend ICANN bylaw relating to the mission of ICANN. It is not our duty and we have no right to do that. It is the (unintelligible). On the other hand, we have GDPR, 25th of May, 2018. Then we have this temporary specification that in the charter we have been asked to amend or let us say in (unintelligible) language to modify - make modification, which means changes, deletion, addition if necessary. We have to connect all these together. We cannot read them and talk them individually in isolation. The beginning of this red line start facilitating what is wrong with that. Someone says that enabling a lawful access to legitimate lawful access third party to do what is the abuse of the DNS is not indirectly in a mission of ICANN. We should avoid that. ICANN says that the stability, security, resiliency of the DNS.

So if we do something relating to abuse, it is part of that indirectly. If we do something about criminals or threats to the cybercrime and so on and so forth, this is not directly the mission. But it is out of that. If we're talking about law enforcement, I don't think that we should say that it is not ICANN. We are not saying that we said that the ICANN mission, which is explained in the bylaw could be used to enable or to facilitate those things mentioned in the red lines and so on.

If anybody has a problem with the specific words, please propose a concrete proposal on that but do not go back say that this is ICANN bylaw and we are not going to (unintelligible). Access is part of the process. If access was not here, I'm not here. I'm not interested in this (unintelligible) at all. I'm interested in the access. So enforcement of the law. Also to avoid any issues or abuse of the DNS and threat and so on so. This is situation. If we miss this link, it is impossible. So we have to find the language that while we do not change and we are not authorized to change the ICANN bylaw relating to the mission, we have to address the issue of access in one way or other. And not in wrong, I would stand to be corrected, what is wrong that ICANN under the current mission (unintelligible) the lawful legitimate access to the data in order to do those things as mentioned here. What is the problem?

Please correct me. Please convince me that I'm wrong. You could not say that I don't (unintelligible). This repetition is counterproductive. We cannot live with that. One time said very quick. Thank you very much. You said it. Here like it. At the very beginning, one stakeholder is against to discuss about access. They have many views say that don't talk about access because now, we are discussing the gating question. This is not possible. Look at the others. We could not be hostage by one group. We are hostage now. We cannot be and by the way, most of the things I want to say was said by Ashley, and by Georgios, and I fully support what they said. And I would like that we need to find some way to get out of this. It is totally counterproductive and destructive to somebody pushing and pushing that. We don't talk about access (unintelligible) because it is not part of the ICANN mission.

Gina Bartlett: Thank you.

Kavouss Arasteh: Please, Chair, make a decision that if someone have a problem with the deadline, propose something or in the (unintelligible) propose something, but to get out of this. This is the fifth meeting we're discussing this (unintelligible). Thank you.

Gina Bartlett: Thank you, Kavouss. Stephanie?

Stephanie Perrin: Stephanie Perrin for the record and I am not quite sure whether my honorable colleague to my right was complaining about my interventions or Farzi's, but yes, we don't want to talk about access as a purpose. I was a director responsible for reviewing this particular problem when I worked in the Office of the Privacy Commissioner of Canada. I don't think it's an ill-informed opinion. I have invited people at this table time and time again to get a data protection authority on the group.

We got Peter Campion from the Council of Europe is all set to join, but no, he's not here. So I'm sorry, you're going to have to put up with me putting up

my flag and raising issues that a data commissioner would raise were they on this group. And no, I wasn't the commissioner. I was only the low-level person that did the work and supervised the team that did the analysis. That's how it works. It isn't the data commissioner that actually does the research into the kind of privacy impact assessment that is required to analyze these fundamental questions.

And if I sound frustrated, I do apologize, but I've been at this for five years and it's really tedious. We should at the very least go through all the letters that the data commissioners have written explaining how they look at these issues, including recital 47, which refers to the use that a controller can make of personal data in order to control fraud and do crime prevention. Yes, you can do that as a controller. And what Mark described for what Microsoft does is precisely that, and this is perfectly legitimate.

But we're not talking about that here. We are talking about ICANN having that as its purpose, which is one stage removed. I would like to endorse what Alan was saying about this fundamental problem. It's a perfectly good thing to do over the data you control, but ICANN in setting policy cannot set that as its purpose. It just can't do that and it will be thrown out if it gets fought in court, I would predict. And it has to be because of the charter that underlies all of these things.

So we need to get this distinction made. Now, another point that I wanted to make specifically about the language because that was the question that was raised. The word investigation is not in there. Now, when ICANN set up WHOIS way back in the beginning days, it set up basically what is basically a surveillance system, public directory and there was debate among the data commissioners of the day as to whether this was appropriate. But at the time, we didn't even know the internet would work let alone whether e-commerce would thrive. So I don't think anybody wanted to make a big deal out of it. Although, they did say it was disproportionate.

Now we're 20 years later. You don't need a surveillance system such as an open WHOIS to achieve your ends. You have a more articulated way to do it. So make that distinction between prevention. We're not in Minority Report land here folks. Surveillance systems attempt to prevent things and I'm not unaware of those malware things work. Yes, you've got to get them right off the bat. There may be specific circumstances for those one things. But if you start putting the word prevention in then you set up, as a purpose, you set up a surveillance regime, which is not what we want. We want capability of investigation. Thank you.

Gina Bartlett: Okay. I need to talk to Kurt for one second. Can you just talk amongst yourselves for, like, two minutes and then I'll come back to the queue. Diane, you're next. Excuse me one second. Just feel free to talk.

Okay. Thank you. Can we reconvene? We have a break that we have to take at 10:15, which is about ten minutes away. So I have Diane, you're next in the text - net in queue, excuse me. And I just want to ask for clarity, Diane, maybe you and then Alex is actually in the queue after you, is can you live with the black text? And if there's - and if you need any kind of modification could your propose something that's in consideration of the other concerns that we've heard?

So the first question is could you live with the black text and if not, or you need some modification just keep it, bear in mind all of the insights we've heard this morning, and concerns.

Diane Plaut: Hi, Diane Plaut for the record. First of all, I want to say that we've all come so far. In LA, we were so close and I think here, we're so close. So let's not lose sight of the fact that we are in a position to be able to propose that language. And that is our mission right here. We are part of this EPDP. ICANN does have within its mission many times the word facilitate, many times the words enable. And certainly as Hadia pointed out, support from the Board and other organizations to show that this is something that has a

grounding for us to make happen, a registrar purpose separately and an ICANN purpose separately.

So let's work together to find this middle ground. The problem with the black language we're trying to sort through is that in maintaining security, stability, and resiliency, that's the technical component as we had discussed in LA that really doesn't at all tie into the second portion of that language, which is fraud prevention, network, and information security, possible crimes. And so what we really need to do is either break it down into two separate - the black language down. We had in LA proposed breaking it down as Benedict had, into two separate ICANN purposes, one that would address just the technical components, which would be the security, stability, and resiliency technical component. And then the second, which would be more in line with the red language that Alex had proposed.

And just to also make a record that all that red language, even though comments around the room have been that doesn't have any basis and where did that come from. This language is very much pulled from the bylaws and the mission. So this is language that has existed within the ICANN framework. So I think that we either have to break down the black language into two separate portions or we can take the black language and work with it to either remove the - make more specificity further down by maybe adding a number four, which calls out potential alleged IP violations after number three. Or separately starts - adds the enabling proposal by Ashley, which I think provides everyone with more comfort.

But we have to somehow combine either breaking down the black language or combining both the black and the red together. So I think we're almost there but we need to be able to put our heads together to bring that forward.

Gina Bartlett: This is Gina. You're suggesting that you would break the black language into two purposes and the second would be this will involve enabling the

disclosure of an adding an Item 4, which would be potential alleged IP violation?

Diane Plaut: That's a possibility. When we were last in LA, that's what Benedict and everyone, we were discussing.

Gina Bartlett: Okay. And then if you use the red language, you would - it sounds like facilitate lawful access is a processing activity and there's a proposal you're saying to change the verb to enable in some way?

Diane Plaut: Yes.

Gina Bartlett: Enable lawful access.

Diane Plaut: Yes, that's right. So we could basically the red language, I mean take the black language and keep it simple like Benedict had proposed in LA, maintaining the security, stability, and resiliency of the domain system and then we could keep his language in there. Or we could add and bring up the red language by changing facilitate to enabling and keeping the specificity in the red.

Gina Bartlett: Thanks, Diane. I have Alex, Ashley, James, Margie, Alan G., and Mark S. And we have a break in five minutes. And Kavouss, sorry.

Alex Deacon: Diane said everything that I think needs to be said. So I'll pass it onto Ashley.

Gina Bartlett: Ashley?

Ashley Heineman: Thank you, Ashley Heineman from the GAC. I just wanted to point out and respond to one of the last interventions. This is clearly not an open system anymore. We recognize this is not an open system anymore. This is actually a closed system and just to remind everyone what we're here to do is to

figure out how to live in this new world of GDPR and be compliant. I think that is something very admirable that we're doing, we have to do.

One other thing I just wanted to note. I've already given my piece on what I think how this ICANN purpose could be modified and my preference for the black text. Quite frankly, though, I'm happy with any of these iterations and I'm not sure that it's worth our time to get bogged down into what words to reflect the third parties are here.

And the reason - I mean I understand why people want to have them named here. So we don't find ourselves in a situation months from now arguing over who has legitimate purposes. But the thing is, is that will be discussed. That is going to be discussed. It has to be part of the universal access model conversation and that is where we'll be discussing what are the lawful bases and the legitimate purposes in that context. And that is going to be a hard conversation but this conversation doesn't need to deal with that is what I'm trying to recognize here.

I know some people have concerns over whether or not they believe IP rights protection is legitimate but that is not this conversation. That is not what we're talking about. We're talking about ICANN enabling the legitimate uses for third parties. So I'll stop there. Thank you.

Gina Bartlett: Thank you, Ashley. James?

James Bladel: Hi, James speaking and I think the conversation may have passed me by but again, we're talking at language. The language in green is the broadest, most generic, and most comprehensive version here. I don't understand why we are struggling to itemize and therefore limit this purpose because I think that once we get into that, and this goes back to my very first discussion here is that we start to run into these definitional boundary problems of what falls into this bucket and what falls into that bucket.

Whereas the first - the language in green essentially encompasses everything that's in red and everything that's in black, in my view. Now, if we wanted to say maintaining the security, stability, and resiliency of the domain name system, comma, and green language that might be a step towards a hybrid approach that covers those bases and checks those boxes.

But I really don't - I'm missing the point I guess on why we want to dig down, make this more specific, more narrow, and then kind of get into the weeds of the different - where the boundaries fall when we can just kind of pull back and say, the green language covers everything. Apologies if I missed the point on this.

Kurt Pritz: Thanks, James. That's really good. Here's my understanding is that the temp spec has language very similar to this and one of the responses we got back from the data protection board was that that language was too broad. And in fact, a letter that Ashley cited said what you just said at the end, that this facilitated lawful access for legitimate third party, for the purposes of SSR would be a better way to put that. They explicitly said that in their letter, which got us to the hybrid language, which has since been elaborated upon in order to make it more specific and make the data protection board even happier.

So that's Part A and Part A is the green language, I think, augmented with stability, security, and resiliency of the domain name system would pass muster as an acceptable purpose. And then I don't know, Ashley kind of cut me off here for this comment. I thought this was a good comment until Ashley spoke. But I'm combining that language, security, stability, and resiliency and some of the things that Mark was talking about, some of the investigations that he does.

So imagine a DNS with no cybercrime, even though, Tatiana, I realize that's vague. But no sorts of crime at all. Just infringements of intellectual property but that half of the domain name registrations infringed on intellectual

property. Would we call that a secure, stable DNS? Probably not. I would say so I don't understand why the investigations that Mark was talking about that I think we all agree are necessary and beneficial doesn't fall under that stability, security, and resiliency moniker. So while I'm not allowed to support anything, you know, James' comment made sense with that specific augmentation.

Gina Bartlett: Okay. I think we have to take a break at 10:15. It's the rule. I know Margie you're next in the thread. Do you want to just super short and then I'll pick up with the thread when we get back? I'm sorry, so we're going to take a break. Can IP and BC get together with NCSG on the break and help hammer out some language? Don't hang out with your group. Hang out with somebody else from another group and try to see if we can work through this language. You've all said you're sick of talking about this. Well, let's get the purpose language together. Let's do it. So use the break effectively and help with some language. All right.

So I think we have, like, a 15 minute - it's a legal break, 15 minutes. Thank you all for all your good thoughts.

END