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Man: So I'm welcoming Chris Disspain and Becky Burr from the ICANN board who broke out of a meeting to sit and answer some questions and provide some guidance. So that's terrific. And Milton Mueller is now joining the table. So welcome to you, Milton. I think we have a quorum. Wherever (Gina) went, she can start.

(Gina): Oh, I'm right here, over here. I was just going to see. Did we get the language? So on the course of the break, there's some language that's been developed for the Purpose N. And we're going to just get it up there. Did you send it Alex?   Purpose B, did I say N? I'm sorry. Purpose B, I'm sorry. It's language to - it's a new purpose language, Purpose B language that everyone's been discussing on the break.

Okay so the refined Purpose B is developing policy and implementing lawful access for legitimate third party interest related to consumer protection, criminal acts, DNS abuse or intellectual property protection to data identified herein that is already collected.

I want to just acknowledge. I know there are some people in this group who do not think that there should even be a Purpose B and we will note that in the initial report. Okay? So I just want to speak to that and not bring that into the thread. Is there anyone who contributed to this that might want to speak to why you feel this language works? (Diane)?

Diane Plaut: We believe that this language works because we tried to -

Man: (Unintelligible).

Diane Plaut: Oh. We tried to address everybody's needs. We took out the security, stability and resiliency because after speaking with Benedict we came to the conclusion that that addressed technical concerns. And was unnecessarily like we had discussed in LA, it is somewhat separate. So we're focusing very closely on the fact that ICANN's mission is to develop - the development of policy and implementation of that policy. And as it relates to lawful access for legitimate third party interest. And then we took the - tried to make it more specific than the green to address the lack of specificity in the green.

And then we also added criminal acts which was the, as Chris recommended under Article 49 that was accepted as opposed to violations. And we took out law enforcement because of the separate component and function rather than the description of that as being purposely - as being appropriately placed here. And otherwise, you know, we carefully crafted this to address all those concerns.

(Gina):   Thank you. Can I just get a pulse? I'm just taking a pulse. Is there - if you - can you raise your hand if you can't live with this language for Purpose B? They underlined language at the top, just pulse. You cannot - if you cannot live with it. Okay, the underlined, I'm just asking. I just wanted a pulse. Okay, the pulse question was, to raise your hand if you can't live with this underlined Purpose B language. I just wanted to get a sense in the room if you can't live with the Purpose B language that's on the board as it reads right now. Just for inclusion, yes. If you can't live with the proposed underlined language for Purpose B for the purpose of inclusion in the initial report. The underlined Purpose B new Purpose B.

Okay, thank you.

Man: It's a step in the right direction, but it's not done yet. So when you say can you live it? The answer is no, but let's keep on it.

(Gina):   I said I just wanted a pulse check, that's all. So I have Thomas is on mine and he went to get in the line to speak and then I've got Margie, Alan, excuse me, Kavouss, Margie, Alan W., Alan G.

Man: Point of order. Yes.

(Gina):   I was going to go to.

Kavouss Arasteh: Any participant can have point of order. During the break, we have spent a lot of time at that corner and we have a text. What happened to that text? Now it is not that text, no. That text is not the one. We totally disagree to have development of policy. We disagree with that We have no problem to say enable, implementation, so on. But talking about development of policy, we totally disagree with that. And the text that we have that, there was no this policy. This was from one stakeholder. They push for that. We disagree. Madam, so please delete that one and then you put it to agree or not. But there was another text. What happened to that text?

(Gina):   The text continued to evolve, Kavouss. So this is where it ended by the end of the break. This is the proposal and it sounds like we need to continue to refine. And so what I'm hearing from you is that the developing policy in implementing. It feels problematic and you prefer enabling, okay?

Kavouss Arasteh: Well and so that report to that, relating to this ability, security, and resiliency of the (VNS) and then to enable or enabling and so on and so forth. What happened to that? We are not to have it as it is. We have spent 45 minutes two or three times we have back and forth. And I don't understand why that text is not there. If you want, put both of them. But in any way, under no circumstances. I agree to put development of polices for this purpose to (unintelligible) enabling to implementation. I have no problem implementation,

no problem. Facilitate for implementation, no problem. But serious and strong opposition to have developing policies. Thank you.

Man: Kavouss? Why do you object to that? I understand you object, and I want to understand why so the group can understand your reasoning.

Kavouss Arasteh: Excuse me. What was your question?

Man: Why are you against developing policy and implementing rather than?

Kavouss Arasteh: That was not part of the discussion. You know we are talking what we have discussed. We negotiated the text. We had the text by Benedict. You have a text by Alex. We have negotiated. We take part of the Benedict text, part of the Alex text, modify that instead of violation, we put protection and so on and so forth and that text should remain. If you have another text, put both of them and I don't understand you delete one text and you talk about another text. I have problem to talk about development of policy. That is coming from one group and they push for that. There is no way that everybody push for its own. It's everybody either should be equally happy or equally unhappy. That's that.

(Gina):   I think that…

Kavouss Arasteh: This is coming from one stakeholder We're opposed to that. Thank you.

Man: Hey folks, I think this is my fault. So I'm going to pipe up.

Woman: Can you speak up a little bit.

Man: I'm only short.

Man: The mic.

Man: Okay, I have moved the mic. Hello guys. So here's my thinking on this one.
                 What I proposed was that we separate these things because they are
                 fundamentally incompatible. I didn't suggest that we add a replacement
                 language which I think is what you, Kavouss, are objecting to that the
                 language underlined. It struct me that we're talking about two different things
                 here. We're talking about ICANN's own intrinsic purpose in keeping the
                 network clean, something we all benefit from. That's why I proposed the
                 language in the second paragraph where we can stand that up in front of the
                 European data protection bodies and say this is ICANN's asserting its
                 purpose. We know that some of that stuff is done by other people. But it's all
                 about cleaning the network up. Keep it narrow on that one.

                 And then have a separate pull out for stuff where other people need access
                 to registration data. And I gave the example of a cop seeing a van speeding
                 away from a getaway of a bank robbery with Bobsflowers.com on the side of
                 it. A laudable aim, they want to find out who owned that van. But it's nothing
                 to do with the cleanliness of the network. So that's the third party access
                 negotiation which should be separate and probably in a separate purpose.
                 So it tends to reason. For that confusion, I apologize. Thank you.

(Gina):   Could you please speak into the microphone?

Woman: Benedict, could you go now and propose language for that separate DSSR
                 component for the first component? Could you propose language, so we
                 could have two separate purposes like you would recommend?

Benedict Addis: I think Kristina wrote something that we're okay with.

(Gina):   Okay, so what's on the table is to have a separate purpose for maintaining
                 the security, stability and resiliency of the domain name system as a separate
                 purpose and then having this purpose around third party interest, so two
                 separate purposes. So while I know Kristina's got some language. I don't
                 know if you want to - is it ready? Or should I go through my queue? I've got

you on the list Kristina. Okay, let's put it - okay Kristina, why don't you go ahead? And then I feel like Thomas is online. We should go to Thomas. He's been waiting for a while and then I'll pick up my thread. Go ahead Kristina.

Kristina Rosette: Okay, thanks. Kristina Rosette for the transcript. I didn't email it to anyone because it's basically an amalgamation of the first sentence of Benedict's original language combined with the language in green with a slight medication. So it's basically (James)' original idea with a slight tweak and a follow up. And the language is, would be maintaining the security, stability, and resiliency of the domain name system through the facilitation of lawful access for legitimate third party interest to data identified herein that is already collected. Couple points, first unless something has changed in the last ten minutes, that proposed language is language that contractor party house member representatives all agree on. Second, we would suggest that if this is language that ends up in the initial report that we would accompany it with a very specific targeted question along the lines of do you believe that this language is sufficiently specific? And if not, how do you propose to modify it? Which gives opportunity to really focus attention on that. Obviously in addition to whatever questions we think Purpose B, whatever it ends up being, merits. Thanks.

(Gina): Thank you, Kristina for that summary. So I've got you in the queue. So I've got Thomas online.

Thomas: Hey good morning everyone. I hope you're doing fine. I'm not sure whether it's more painful to be in the room and follow that discussion or whether it's more painful to do that from a distance. You asked earlier whether the language is acceptable or whether there's strong objection to the purpose language. And I would like to put on the record that no matter what set of words you're agreeing on today, there needs to be a caveat with it that this needs to be revisited in the light of the access discussion.

We've discussed in LA and in other discussions on our telcos that for data disclosure you need to have this double door principle followed with means basically us the party disclosing data needs to have a legal basis for disclosing the data. And the recipient of the data also needs to have a legal basis for receiving the data. And so far we have not done any analysis of this as a group. We have not categorized who the groups of request might be. What data they're asking for. And what the legal basis for such request would be.

And therefore we need to revisit whatever we discuss today and check whether it needs to be adjusted. Let me just give you one example and I'll - then my intervention will be over. There's been a lot of talk about Recital 47 and just this recital has been used by some in this group to justify whatever is required in terms of data processing for fraud prevention. But if you look at legal literature speaking to that very recital, this is about fraud prevention so that the data controller is not defrauded. So if you're running a company, then you are entitled to analyze the data you have in order to prevent yourself from being frauded by your customers or third parties.

This scenario is totally different, right? So we're discussing fraud prevention by third parties outside this entire ecosystem. And therefore let's please note jump the gun and come to conclusions that certain data processing might be lawful. We're yet far away from having asserted or having confirmed that disclosure to third party is okay. I see this as a first step to try and justify the collection of data, but this is far from being stable at the moment. We need to have the access discussion to confirm what - to confirm and refine the language that we're coming up with during that meeting. Thank you.

(Gina): Thank you Thomas. Margie I had you in the thread. Are you? You pass, okay. Alan W., it's been a while, but since you put your hand up.

Alan Woods: No problem. Alan Woods for the record. So I've a general, kind of, existential question about the wording that was developed by our friends in the

(unintelligible) with the GAC. Why do we continuously include the concept of intellectual property protection and consume protection when that's already in N? It's already covered in Purpose N, the resolution of disputes with regard to that. So why do we need? I just don't understand why. Just please make me understand why we need to continuously make specific references.

(Gina): Margie you want to answer?

Man: Try it again.

Margie Milam: Okay, thank you. It's because that purpose is only for the UDRP. And we're talking about (unintelligible) property matters that are outside of the UDRP. So that's the reason.

Alan Woods: And why is that necessary for us considering the data is the intellectual property mechanisms which the ICANN community have actually agreed upon. So why are you trying to - are you trying - are you suggesting there should be more intellectual properties within the ICANN community?

Margie Milam: First of all, there is no agreement. That's the only thing that applies to IP. So I would object to your statement. There's a lot of legal basis for pursuing intellectual property infringements such as the ACPA that requires access to WHOIS. So and under the ACPA, you prove bad faith if there is inaccurate WHOIS. That's one of the elements. And so what we're talking about is, you know, all these other things are not specific to ICANN resolutions either. I mean it's - intellectual property is a broader thing that just the UDRP, although the UDRP is obviously a very important mechanism for us.

(Gina): Alan, did that answer your question? Can I go back to my queue?

Alan Woods: It is a conversation for another time. It unfortunately did not, because we're again talking about different legal requirements. So no, but I think we should be limiting ourselves to, you know, what is required in the ICANN sphere and

not with other legal aspects, which again I just refer to 61F would probably help you in all those ones.

(Gina):   Thank you. Alan G. Thanks for waiting.

Alan Greenberg: Well my intervention I guess since we're talking about a completely different subject now; however, is this working?

(Gina):   It's working, and maybe you could speak to the language of the purpose.

Alan Greenberg: No, I just yes. The problem I have with the wording at the top there is the reference to criminal access has been pointed before. A lot of what we're looking at, at the time we're looking at is not necessarily a criminal act. It may never be a criminal act. It may be illegal under various terms, but it's not necessarily criminal. And, you know, criminal law is very specific. So that's my major concern.

The other concern I have is unless we are talking about releasing data to a third party form to do a study to facilitate a policy development process, in other words we have to collect some data so we're (unintelligible) database policy, I see no relevance for having the expression developing policy as a purpose.

(Gina):   Okay, thank you Alan. Can I just ask, is the other word that was considered was criminal investigations, does that help at all or no? Okay. Illegal or unlawful, okay. Kristina, did you - you were in the thread, are you? You're (unintelligible).

Kristina Rosette: I was in the thread. I guess the only thing that I would like is to get a sense of the room is to who could live with our proposed modification.

(Gina):   Could you read that one more time? I know maintaining the security, stability and resiliency of the domain name system.

Kristina Rosette: I'll email it to (Marika) right now to put up.

(Gina):   Okay, great. Why don't you do that and then we can get - take a pulse. I'll
                     keep going through this thread while that's happening. Hadia are - you're
                     down now? You pass? Stephanie's been waiting. Thanks Stephanie.

Stephanie Perrin: Thanks very much. I'll make this very brief because I've made this points over
                     the several meetings. I'm going to write you out a formal dissent on Purpose
                     B. You don't to state compliance with law as a purpose when you are a data
                     controller or a data processor. And that includes administrative law and the
                     kids of things like the (ACPA) that Margie just cited. Compliance with law is a
                     given. What? You're not going to comply with law?

                     So to state this as a purpose is a waste of all our time and opens up a
                     number of cans of worms. So I'm - this is a last, I hope this is the last I'm
                     going to say on this, but I won't promise. But I'll write out the full legal
                     rationale for why you don't need this purpose. Thank you.

(Gina):   Thank you, Stephanie. Kavouss, thanks for waiting. Then I've got Milton and
                     Farzeneh and then yes. When we get the language up, we might pause. Go
                     ahead, Kavouss.

Kavouss Arasteh: Thank you, (Gina). Once again, I request you to kindly to put the text that we
                     have developed at that corner two distinguished colleagues from ITC during
                     the break with changing some working instead of violation talking protection.
                     Put that text as well. This Point 1. Point 2, the implementation of this action
                     should not be subordinated or linked with the policy development. Policy
                     development is another avenue you can start to do something based on the
                     specific rules and regulations and so on, so forth. They do not to link this
                     together. So once again, please kindly put that text which has the
                     combination of Benedict text and Alex text with some changes makes the
                     people happy instead of violation, we put protection. Instead of criminal act,

we put some other things. And that was something that almost with - we have agreed except one group which is not to have that is, should be there. So I don't want to spend the time and then all of a sudden everything will be put through the basket. Please kindly request you firmly to put that text on the board.

(Gina): Kavouss, I'll try to type it up. I'm not sure I still have it. But I'll try to type it up here.

Kavouss Arasteh: This last one I don't know where it comes from. I don't know where it come from. That one, so put both of them and we discuss them. But once again, we don't want this implementation of the lawful access and so on, so forth be subjected or connected or related to the policy development. Because policy development may take years. Who knows that? In one case, we have six years to develop a policy. We don't want. We have something to implement. That is more or less an urgency. So we want to do that.

It may have required to have some policy development. It is not excluded but is not part of this definition. Thank you.

(Gina): Thank you, Kavouss. Okay, I'm going to turn everyone to the - so it's the second paragraph, the new CPH it says. Maintaining the security, stability and resiliency of the domain name system through the facilitation of lawful access for legitimate third party interest to data identified herein that is already collected. And part of that is that the companion to this which I think is what Thomas was suggesting as well is that you look at the - we propose that this language would be accompanied by specific questions in the initial report such as is this language sufficiently specific and if not, how do you propose to modify it?

So I think Kristina wanted to take a pulse check for this second paragraph. Is it okay to say raise your and if you can't live with this?

Milton Mueller: Can we discuss it first?

(Gina):   Some discussion of that, yes. So Milton, you were actually next in my queue. How timely.

Milton Mueller: I knew that. That's why. So let me come in a little late here. I'm feeling very nostalgic about what we did in Las Angeles. And let me tell you, remind you. I think you've lost sight of this possibly. The reason the first paragraph is not acceptable is that the whole attempt to reach agreement in Los Angeles was based around getting rid of all of these enumerations of third party interest which opened the door to all kinds of purposes which are not really ICANN's. So that means that in our opinion, this new CPH proposal is better than the less new one on the top. But it still makes us a bit nervous because it's not clear what data is to be collected that could be or what forms of access would maintain the security, stability and resiliency of the domain name system?

You know, there are people who believe that they should just have all of the WHOIS data all the time. That they can mine it because they will be doing security research. Is that not right Benedict?

Benedict Addis: No, that's not right.

Milton Mueller: Oh, it isn't. Well you know different security researchers than I know at Georgia Tech. So I will maintain that ascertain that if your purpose, you know, is to maintain security, stability, and resiliency of the domain name system, it's good that you're limiting it to the domain name system. Thank you very much for that. Because the other language doesn't and that's a disaster and we can't ever live with that.

But as an ICANN purpose, we have to be careful that this does not expand the mission of ICANN and that it doesn't open the door to unlimited access to WHOIS data for anybody who claims that there's somehow indirectly

contributing to the stability and resiliency of the domain name system. That's my comment.

(Gina): Thanks Milton. Farzaneh, you're next.

Farzaneh Badil: Sorry, Farzaneh Badil, noncommercial stakeholder group. So NCSG has suggested language, but I'm - first let me tell you that we are (unintelligible) method of going through all these languages and it doesn't seem to be working. But anyway, I'm going to provide the suggested language and see what the crowd thinks.

So our language us develops and coordinates policy regarding lawful access for third party legitimate interest. Now the specific of what these legitimate interests are should be decided when the actual facilitation of access is happening, not in the policy like general overarching policy. If the group does not accept that, then we can discuss the legitimate interests and specify what are the legitimate interests. But that was our language.

(Gina): Yes, okay she's going to put that language up. I'm going to go. I've got a queue here. I've got Alan G., Amr, (Ashley).

Farzaneh Badil: Sorry, just clarification, NSSG is not dissenting on recommended language. We are here to work with you. Stephanie's dissent is individual dissent. It's not a group dissent.

(Gina): Thanks for that clarification. This is Number 3, develops and coordinates policy regarding lawful access for third party legitimate interest. So I think we're going to work a little bit more you all. And then I think we're going to have to call it to question before we go to lunch. So any - I'm going to go through my queue. I have all of you, but I think, you know, we really need to hear from you help to build understanding and refinement. Because we are not going to spend the whole day on this. So we may just have to call it to

question for the initial report. I'm just putting that out there. Alan G. put his hand down. Amr.

Amr Elsadr: Thanks this is Amr Elsadr from the NSSG. And yes, I want to go back to the contracted parties house proposal. My understanding of, you know, (DNSSR) is basically what is in the ICANN bylaws under 4.60, I think. that's, sort of, a - it spells out the scope of SSR reviews. And so this is my understanding of what is involved in SSR. And so I am not clear on what the contracted parties' proposal here actually means. How does lawful access for legitimate third party interest assist or maintain the SSR of the DNS? So I'm not clear on the purpose of the purpose.

So if that could be explained, that might go toward - it might go some way towards understanding why it is necessary. And then that would help us also address what Thomas brought up earlier because we've been discussing these purposes but we haven't been really getting into the legal bases that would justify them in any way. So I'd just like to take a step back and figure out what is actually being proposed here.

(Gina):   Thank you Amr. I think Emily's going to respond.

Emily Taylor: Yes, just a quick one to your question Amr and maybe (Ben) can add some detail on this a swell. I think it actually goes back to the original reasons why WHOIS was developed in the first place which was to resolve exactly these sort of queries and these sort of - to provide intimation to people who wanted to assist with problems in the network if you like. And it was like - it was giving essential information about some technical aspects of the domain name and also who is responsible for running it. But I'm sure (Ben) can describe it much better. But that was just a very quick point of information your query. Thank you.

(Gina):   Okay, (Ashley). So I've got (Ashley), (Diane), (Mark F.), Kavouss, Mark A., and Hadia.

(Ashley):   Thanks (Ashley) with the GAC. First of all I agree with everything that just -
                    Emily just said for the record. Anyway, but what I got on the mic for was to
                    respond to some comments that Milton made. And I understand the concerns
                    that he raised with respect to wanting to make sure that this purpose doesn't,
                    you know, lend to unlimited access of WHOIS simply by having it as a
                    purpose.

                    But just to remind everyone once again this is not intended to be the point of
                    access. This is not supposed to be dictating how access is going to be
                    provided and the interest involved and all those things. We agree that's going
                    to be a later conversation. So if there was any way that we can make that
                    distinction so painfully clear, so we could not keep finding ourselves crossing
                    into that lane which we've all agreed we're not in, I think we would be so
                    much better placed to agree to a Purpose B. We're not talking about how
                    much information you're going to be given. We're not talking about, you know,
                    for what party and what their legitimate purpose is going to be. We're only
                    talking about ICANN and to a certain extent the contracted parties.

                    So I just wanted to make that distinction again. And if it comes down to it, we
                    just need to be - add words here to make that clear. I'm happy to do that and
                    think about it. I don't have anything off the top of my head, but I will stop
                    there. Thanks.

(Gina):   Thanks (Ashley). (Diane)?

Diane Plaut: Hi yes, I'm in support of what (Ashley) just said and I really wanted to make
                    the point and the fact that in response to what Milton said that this is certainly
                    not any kind of attempt to show that there could be - that people don't
                    appreciate that the - with the GDPR implementation that there's going to be
                    any kind of future unlimited access capability. That the access model is going
                    to be a restricted access model based upon provide legitimate interest. So
                    certainly I wanted to make that clear in the record.

An in relation to what Stephanie said I also wanted to make clear that there is not any kind of anything on the table to suggest that we're making any kind of legal specifications under these purposes. What we're doing is we're providing a framework for people to be able to assert their legal rights through the facilitation of creating the development of policy and implementing that policy for facilitation aligned with ICANN's mission.

But anyway, getting back to the language that was proposed. We came up with the development policy and implementing as a compromise as you know (Gina) because the - even though facilitation is used repeatedly within the bylaws and certainly within the scope of what ICANN should be able to do, there seems to be more of the need to focus around development of policy in relation to that facilitation.

So Kavouss, to address your concern, while we certainly believe that enabling and facilitation should be able to be in there, that was the formulation of a compromise. And while we certainly are happy to work with on the Number 2 to try to come up with language that is acceptable, I know that when we were first in LA that Benedict and we all agreed that we would separate it out into two purposes and that's where Benedict and I were discussing this morning and that I suggested earlier today is that no having to have one of these purposes one or two, but we had discussed the fact hat we would have both of them. That we would have one that would address the maintenance of the security, stability and resiliency.

And then the second one that would then address the development of policy and implementation and/or the facilitation of for access for third party legitimate interests. And related to this specified group of needs that is identified within ICANN's bylaws and mission. And which is clearly in there and acted on upon for the past 20 years.

(Gina):   Thank you (Diane). Mark S.

Mark Svancarek: (Unintelligible), yes I always wanted to acknowledge Milton's intervention and agree with him that when we do get to the access discussion that certain guardrails will need to be in place. But just to, you know, as other people have said since we are not at that point, for this, I'm just really focusing on making sure that there is nothing blocking us from creating that sort of a model at a subsequent time.

(Gina): Thank you Mark. Kavouss?

Kavouss Arasteh: Yes, (Gina) let me explain you the problem of this last version. It has two parts. The first part is develop.

(Gina): Could you clarify? Are you Number 3?

Kavouss Arasteh: Yes, I'm referring to Number 3.

(Gina): Great, we just wanted to make we knew. Go ahead.

Kavouss Arasteh: Yeah, two parts; develop and coordinate policy. This is one part. Regarding lawful access for third party legitimate interest to what? Access to what? To water? To restaurant? To meal? To what? To airplane? To ticket? What it? And then coordinate. Coordinate with whom? If you want to develop a policy, in developing your policy coordination is an integral part of that development. No policy in ICANN has been developed without being coordinated with third party. So that is the difficulty.

Moreover, we have heard this one moth ago. This coming from NCSG, one month ago exactly the same thing. They have two or three version. Until we ground something back (unintelligible) (Gina) we don't agree with that. We don't agree with coordinating this to the others. If you want to do, you may refer to the needs to develop a policy. But maybe put it at the end. Including

the development of a policy in this regard if so required. You can have something (unintelligible).

Then you have to add at the end when you have access. Access to what? Access to data. And then you have to have access to data to do what? We have to mention those three elements which are in the first or the second - in the second one. Access to data for what? To do what? To avoid abuse of the DNS, criminal acts or whatever working you put that. So this third sentence is totally incomplete. And it's (unintelligible) and does not address what we ware gathering here.

(Gina):   Okay.

Kavouss Arasteh: And I don't think we should come back again and again and again. Something we should propose ten times and ten times was not agreed. I'm not saying that it's correct or not correct. Was not agreed. So we have to develop something, and we have to work together. And we have to have some consensus on something. So please can we not come back again saying that access is not part of the purpose. We have to have develop the policy. This is not. We can't take that again.

(Gina):   Okay.

Kavouss Arasteh: We are not progression. We're going - turning it out ourself. Thank you.

(Gina):   Thank you. Marc A.

Marc Anderson: Marc Anderson, I raised my hand. We've been talking about purpose and Purpose B for so long now, you know, we've been wordsmithing words that were already wordsmithed. So I think maybe we're spending our wheels a little bit. I was thinking about like why we started talking about this in the first place and, you know, I think Milton sort of set up on a little bit of a path with Purpose B as a placeholder recognizing that we're going to get to access

later. And what we need now, I think, is to have language in the initial policy that will bridge the gap from the initial policy recommendations until the second phase where we can define, you know, access.

I think (Ashley) you were talking about the specifics of, you know, who gets access. Under what circumstances and what access they get to, right? I think we all recognize that these are things we're going to talk about at this later phase. These are all questions we have yet to define.

You know and Mark you put it, you know, we are looking for some initial guardrails here, but also how we make sure that that conversation, you know, isn't, you know, the door isn't shut anywhere at this point. And so I think maybe if we, you know, maybe take a step back and say okay what - rather than talk about this as a purpose. Maybe we can talk about okay what is it that the working group does agree to, right? I think the working group agrees that ICANN has within its mission, you know, the - how did you, Kristina, how did you put it? The coordination of access to data facilitating? You know, we agree that ICANN has that in its mission and that we as a working group are going to get back to that question in a later phase.

You know, instead of looking at this in purposes, are there some principles that we can say we agree to these principles? And sort of put a stake in the sand saying this is what we agree to in principle rather than trying to spin or wheels over this purpose language which we just don't seem to be able to get all the way to the finish line on. I'll throw that out there, I guess.

(Gina):   Thank you, Marc. Hadia are you a pass? Okay, Alan G.

Alan Greenberg: Thank you. Three brief points. I raised the issue before, but no one has answered it. In Number 1 and Number 3, we have the active developing policy as a GDPR purpose. I really do not understand that and I would appreciate if someone could explain why the act of developing policy is a

GDPR access issue. I'm complete confused by that. And I'd like to be illuminated. With regard to Stephanie -

(Gina): Alan, I'm sorry. I didn't quite hear you. Could you just say it briefly again? Which part's confusing?

Alan Greenberg: Number 1 and Number 3 talk about developing policy in a statement of GDPR purpose. I don't understand that. Now as I said before, except for perhaps doing a survey to give us informed knowledge in creating the policy, I can't see why access to WHOIS information is relevant to policy development explicitly. So I really don't understand it. I'd love for some to explain it to me. That's Number 1.

Number 2, Stephanie and others have said we don't need a Purpose B or it has to be modified because there is a legal requirement to do this under GDPR. We have many contracted parties who are not subjected to GDPR. We're trying to make policy that applies to all of them and to make sure that everyone has access to registration data where it is applicable and reasonable even if they're not based in Europe or have European customers.

(Gina): Okay.

Marc Anderson: And I can't read my writing on the third one.

(Gina): I hate when that happens.

Marc Anderson: I'll put my hand out again when I figure out what I said.

(Gina): Chris, I think (Chris) wants to get in. Go ahead Chris. Thank you, Alan, excuse me.

Chris: I don't need to be out of order. I'm happy to wait my turn. Go ahead? Okay. I just wanted to say that for what it's worth, seems to me that Number 2 is

much more closely aligned with ICANN's mission statement.   One appears to be picking out, sort of, random things and naming them. I'm not suggesting they're not legitimate just sort of randomly picking things out. And the moment you start a list, you risk the failure because you've missed something you've included something that people disagree with.

Whereas I think if you look at two, especially with asterisk underneath which I'm guessing is that's what's intended to have happened, right? I think that fits the mission within the mission pretty well. So if it's livable with I'd encourage you to try and go with it if you can, thanks. And also I just need to say because it's very important, Becky agrees with me.

Marc Anderson: If I could get in with my third point, it'll be very brief. I finally figured out what I wrote. With regard to the statement Number 3 and Milton's version and recounting, the agreement we came to in Los Angeles, I would like someone to explain to us. Do we or do we not need more detail? We agreed to that. Then on the first meeting when we came back from Las Angeles, various people said that's not acceptable because we need more detail. But I'm not the expert on this. I'd really like to know do we or do we not need more detail?

(Gina):   Yes, so we have two questions on the table. One is Chris' recommendation that two feels like it fits definitely as an ICANN purpose and then that's closely aligned with the second which is do we need the specification of the other elements?   Or what I hear is grapple with the specifics later in the processing activities a little down the line. Farzaneh, you're next.

Farzaneh Badil: Farzaneh Badil, NCSG. So the language that we have proposed the development coordination of policy is regarding (unintelligible) is in ICANN mission and bylaws. So ICANN should not facilitate or give access to WHOIS data. It can coordinate the development and implementation of policy so regarding access. That is why it's there. And also I think when we look at language one that has been proposed, we can just tweak it a little bit to

reflect what NCSG has and for the legitimate interest to be enumerated, we argued that it's not needed. Because this is about development of policy and overarching policy. It's not about facilitation like direct facilitation.

Now as to Alan's, I have to comment on Alan saying that how is this a purpose? Access cannot be a purpose, but the thing that we did in LA was to just come to a compromise because some people wanted access to be a purpose. We thought we come to a compromise to have this as one of ICANN's purposes and that is why it's there. And Stephanie has been saying all this time that it's not - access is not a purpose. But this is why it's there and I think we can just work on the language to - or also mark to work on some principles. If these languages are not accepted. Thank you.

(Gina):   (Unintelligible). Milton, Margie, Hadia and then I think Kurt wants to get in. Milton.

Milton Mueller: So Farzaneh explained why the NCSG representatives want to make this a policy. So or mentioned developing coordinating policy as a purpose. But I think what we're bumping into here is that Marc is fundamentally correct. It's actually not sensible to call disclosure a purpose for collecting data. It just doesn't make sense. And people raised this argument when we were debating Purpose B back in Los Angeles. And the only reason we agreed and many of us agreed to call it a purpose was that we wanted to reach a compromise that was acceptable to everybody.

And now we are wrapping ourselves around the axle because of the contradictions of calling disclosure a purpose for collection when it's not really. So how do we get out of this? There's fundamentally two ways. We come up with an extremely limited definition maybe something between the Number 2 and Number 3. Or we do what Marc suggested and we abandon this as a purpose and say that we're going to develop a policy regarding access. And we develop a policy regarding access and call it a policy regarding access. We don't call it a purpose for data collection.

So that's a choice I think we have.

(Gina): Thank you, Milton. Margie thanks for waiting.

Margie Milam: Well I think - this is Margie. I think the reason we kind of go around and around is because we keep hearing inconsistent or conflicting viewpoints. And so if we knew - at first I was skeptical of the principle concept because our goal here is to identify the purposes, not principles. But if the principle is acknowledged some of these points, then I thin we'll feel more comfortable that when we get to the access discussion, we'll actually have grounds to establish whatever access there will be, for example, intellectual property purposes.

But the question that - the reason I phrase that is because when Alan was asked a question about intellectual property, it almost sounded like there was a disagreement that there should be access for intellectual property. And if that's the case, then that's what's causing us a lot of the problem. And I think when we're willing to explore different ways of solving this issue, but if it I means that we're deferring a discussion that is fundamentally, at least to some people at the table, it's going to make it hard for us to agree on the purpose unless we get some principles that, you know, somewhere that, you know, collectively we agree as a group that intellectual property. That is something that you could have access for beyond the UDRP.

And so that's the concern I have and that's the reason why we're going around and around is because we don't feel that the language is specific enough to help us.

(Gina): Thanks Margie. Kurt wants to jump in. Go ahead Kurt.

Kurt Pritz: Thanks. So of the choicest that have been discussed, I'm loath to completely drop this as a purpose. Remember this was a consolidation of four other

purposes that we agreed to create one. And so I'm afraid of that progression and that just dropping it might mean we lose something. But I wonder if we adopt the language of Number 2 or Number 3 or some combination of that, we memorialize the items in Number 1 either or both through the idea that Margie had in the principles which I think is the old Appendix C. Or in the processing activity. So we can get pretty specific in the processing activities where these disclosures are made and call out intellectual property as an intended processing activity. So it's memorialized in the document below. So we would include it in the principles and in the processing activities.

(Gina): Thanks Kurt. So Item 2 is on the table or some combination of 2 and 3. Hadia you're next in the queue.

Hadia Eliminiawi: So actually yes, Hadia Eliminiawi for the record. I was going so say something along what Kurt said. So I sort of support or towards Number 2 and so I see some people do not like maintaining the security, stability and resiliency of the domain name. And as I read up there, it's an ICANN purpose. And the first sentence stems from ICANN's mission. So I don't know how can this be a problem to include this and it's clearly an ICANN mission. However, I do understand Milton's problem here. That he's - that this will grant unlimited access or access to ungranted access to people later. And again, we are not talking here about who this is going to provide access to. It's just we need something in the temp spec that guarantees that access would be enabled to those with legitimate interests. And that's what we all are trying to do, I guess.

And with regard to the other word facilitation, I think some also here don't agree on using the word facilitation. And we could use instead the word enable. And the word enable was actually mentioned in the European data protection board - letter to the board on the 5th of July. So they did use the word enable. So I think we could use the word enable instead.

And then to another point that was raised that maintaining the security, stability and resiliency of the domain name strictly talks about the technical aspects of ICANN mission and not the other aspects. Actually, again, the letter of the European data protection board did acknowledge that ICANN's mission goes beyond the technical aspects.

And another point I would like to make here that we are not here discussing ICANN's mission. We are trying to reach compliance and ensure that we have a system that enables those with legitimate interest to have an access system. And then to some other - to the concerns of others about the intellectual property protection rights. And I would say that the purpose of the (unintelligible) with the asterisk gives the possibility to be more specific later and adds more items related to intellectual property or consumer protection or other interests that we would like to see. . Thank you.

(Gina):   Thank you, Hadia. Kavouss, I think you're next and then we - Marc A., do you still have your - are you up or no? And what about you Alan G.,? You're in the thread? Okay. I'll go to Kavouss and then I have (Ashley) yes. Kavouss? Yes, please.

Kavouss Arasteh: Yes, I think you have heard the wise advise of the board (unintelligible), the advice of the board that Number 2 is the closest to ICANN mission. If some people do not want to refer to security, stability and resiliency of the DNS, you could replace that by in line with ICANN mission facilitate or enable lawful access for legitimate third party interesting so on so forth. But Number 2 is most closest. I don't agree to combine Number 3 with Number 2 because, Number 3 had this development and coordination of policy. Once again, it has nothing to do with this purpose.

(Gina):   Okay, thank you Kavouss. So it seems like a couple people are suggesting that on Number 2 - I know everybody's getting a little tired. But to replace facilitation with enable. I'm going to go next to (Ashley). You're next.

(Ashley):   Okay, I thought I was not next, but I'm happy to go.

(Gina):   Okay.

(Ashley):   I thought somebody was before me, but I'm happy to go.

(Gina):   I was checking with - oh Alan was before you. Okay, Alan and Marc was done. So I'll go to Alan and then I'll come to you (Ashley) thanks.

Alan Greenberg: I don't much matter - mind the order. Just to be clear in my mind disclosure is not a purpose. I don't think anyone is saying disclosure is a purpose and I don't believe writing policy is a purpose. Okay, the purpose is having policy that requires disclosure under appropriate circumstances. And yes, we need to define and specify what those appropriate purposes are and to whom and how and what. But the purpose is to make sure that information is disclosed in appropriate circumstances remembering that not everybody is subject to the GDPR and we're writing policy for all of our contracted parties, not just a few. Thank you.

(Gina):   Thanks Alan. Go ahead (Ashely).

(Ashley):   (Ashley) with the GAC. I'm still in my thunder, but I'll rephrase it slightly. Which is I agree. Access in and of itself is not a purpose, but if you look at the words whether it's facilitate or enable, that is the purpose. You're enabling. You're facilitating. There are things involved like I know we already agreed that the data being collected is the same, but that data is being collected in part, in my mind, to do what we're doing. You know, so I think again, if we just keep the words - if we recognize that this is not the act of access, this becomes a lot easier of an exercise. It's not the act of access. We're putting things in place what will enable the access. It's recognition that yes, access is something that's being required in this, and it's a purpose and there are things associated with enabling that access. Thank you.

(Gina): Okay, to make - yes, Kristina. So maybe we can put that issue to bed. You know, we've covered it. Kristin, help us out. Next, you're next.

Kristina Rosette: Not to sound - Kristina Rosette for the transcript. Not to sound like a broken record because we started to do it then didn't actually do it. I would really like to see a show of hands of who cannot live with formulation Number 2.

(Gina): So maybe could I ask for a friendly amendment? Who cannot live with Number 2 if we change the word facilitation to enabling? So through enabling of whatever the appropriate. you know, Ing. And Kurt's amendment around either we capture in principles or in the processing activities we go into the more detailed list. That was your amendment, right? So it would be two and either developing some principles or going into the processing activities for each use. Does that help? That makes it worse, okay.

Man: (Unintelligible). In my mind what would help is to replace facilitation of lawful access with development and implementation of policies for lawful access.

(Gina): Georgios.

Woman: Can I just say that I think and speak up if I'm wrong, but I think CPH is okay with your friendly amendment of replacing facilitation with enabling or whatever iteration of the word enable makes sense here.

(Gina): Would enable.

Man: So Milton can you - Milton, could you provide some rationale for why replacing those words with developing policy and implementation? Can you explain the purpose for that?

Milton Mueller: Well again it's just tying back to the mission that is in ICANN's mission to develop policy for the stability and security of DNS.

(Gina):   Georgios go ahead and then I'll come back to you, Alan.

Georgios Tselentis: Yes, if I can provide a compromise here. I think most people agree with
                    Number 2. Then I think we can keep it as is. And then add to replace the
                    facilitation with enable as was the proposal. And then at the end add develop
                    policies whenever this is required for this purpose.

(Gina):   Farzaneh.

Farzaneh Badil: So enabling through policy then. It has to be enabling through policy
                    because if you say enable it can be interpreted that ICANN should actually
                    get involved with the act of giving access.

(Gina):   Yes, enabling through policy, okay. I've got Alan W., and Kavouss is waiting
                    and Alan G.

Alan Woods: Alan Woods for the record. Yes, I think that is definitely closer. I think with
                    regards to the policy, the creation of policy, can we put in like community
                    created policy?

((Crosstalk))

Alan Woods: Yes? We can work on this over lunch.

Farzaneh Badil: You actually, what you are saying, so that is what I thought policy was in
                    ICANN. It was community, but we should put that clarification. However, I
                    have to say that at the moment, I don't know what NCSG thinks in general
                    about this. But I do not like the mention of the security, stability and resiliency
                    as I have been saying throughout, but because security and stability is as I
                    said after DNS is - so to the legitimate third party, it is not - SSR does not
                    include IP enforcement. And I have said that. It has to be limited and
                    technical definition. And we have been seeing that as security, stability and

resiliency is being interpreted in non-technical manners and that is dangerous, and it will expand ICANN mission.

But this - it seems like I'm the lone - I'm the only one here that says this. So if the group thinks we should have SSR and then also give access - have policy that give access to intellectual property right owners to WHOIS for maintaining security, stability and resiliency, then I can't do anything.

(Gina): Right, so we may just have to note that concern. So I'm going to go to Kavouss. I really want to get down to Margie. Go ahead, Kavouss and Alan G. if you could be concise, it would be appreciated.

Kavouss Arasteh: Thank you, (Gina). I don't think we need to defend our own personal or group or community interesting. We have to work to have something agreed by people. I understand that one community or one stakeholder always defer to development of a policy. Okay, we can put it at the end of the second version saying that. This may include development of policies which may be required as appropriate. This may include development of policies which could be required as appropriate. We don't exclude that. Put it in.

My purpose is not to oppose to anybody, but to have some agreement. We cannot continue this ping pong among peoples. We should not push for our own interest or our own suggestion. We should something to have together. Could somebody please kindly include that at the end of the second version or second text? This may include development of policies which may be required, as appropriate.

(Gina): Thank you, Kavouss.

Kavouss Arasteh: Thank you.

(Gina): Alan G. and then I'm going to come to Margie to see. We want to make sure we've got BC with us.

Alan Greenberg: Yes, very quick. Stephanie is saying we need a data protection expert here. I think we need a linguist or someone, you know, who's spend their life writing dictionaries. The word enabling was suggested because it did not seem to those who suggested it to connote any active part on the point of ICANN but just making sure the infrastructure was in place. Other people clearly view enabling as something as an active role. So I think language is a large part of our debates here.

(Gina): Yes, it often comes to the verb, I find. Margie, let's check in with where you're at.

Margie Milam: Sure, yes. I have a problem with Number 2 because just as Farzaneh mentioned. She doesn't believe that IP interest would be included in that. And I think that's a fair description of what you'd interpret those words to be. So that's the reason why I would have a problem with Number 2. Essentially in order to get access for the third party interest, you'd have to show this is how it's linked back to security, stability and resiliency of the internet or the domain name system. Which, I think, is much narrower than it needs to be.

So actually in - from my perspective, the original green language which doesn't have the caveat of maintaining the security, stability and resiliency of the domain name system is boarder and from my perspective better even though I still think we need to be more specific as I mentioned before.

(Gina): Okay, I think (Benedict) wants to respond to that.

Benedict Addis: Margie, that feels like putting the cart before the horse. We're not here to discuss how to get you want you need. We're here to discuss how to make ICANN policy compliant with GDPR. Thank you.

(Gina): Margie.

Margie Milam: I wanted to ask one question.

(Gina):   Sure.

Margie Milam: So on Number 2, Kurt, you know, had an amendment that it was number two and either develop some principles or we clarify in the processing activities for IP. Does that help with Number 2 or all or not? I'm not challenging. I just want to understand.

I don't mind adding something. So if it's through principles, I mean I'm not trying to suggest that have to solve access now. But if you write the purpose so narrowly that it excludes IP interest, that's the problem I have. And that's why we have to address it now, not later. You can't exclude it. And then we can talk about the appropriate access levels when we get to that point.

(Gina):   Okay thanks Margie. I've got Amr, (James) and I'll come back to Mark S.

Amr Elsadr: Thanks. This is Amr from the NCSG and just following up on what Farzaneh was saying earlier and Margie. And also referring to Emily's response to my earlier question. I don't think IP interests belong in SSR related issues. If, you know, if access for the purpose of protecting IP interests is a purpose, it belongs elsewhere, but we can have that discussion somewhere else. But I think if we somehow include some of the explanation Emily provided earlier into Number 2 here, I think I would find that helpful in, sort of, at least adding to the number of folks that might agree this is a purpose. So, maybe we can try to do that, if that's okay.

Woman: I'm not sure I remember what that was, I'm sorry.

Amr Elsadr: Basically Emily, yes, I think, and she can correct me if I'm mistaken was referring to the original purpose of WHOIS way back in the day to enable, sort of, like network operators to communicate with each other when there are security, stability or resiliency issues, operational issues with the DNS. So

just to make sure, you know, that domain names resolve the way they're meant to resolve and to enable communication between folks who are supposed to make sure this works the way it is supposed to.

So from that perspective, I personally I think this should be a fundamental purpose of registration data. You know, you need to have network operators. Need to allow them to communicate with each other to resolve these issues. So if we could somehow clarify this just to make sure there's no ambiguity. You know, that SSR is referring to IP interest with anything else. I think that would be very helpful.

And again, when I ask my question, I was referring to Section 4.6C of the bylaws which describes the reviews for the SSR reviews and the scope of those. And I think that would fit in nicely with that as well. So I think it might be helpful. Thanks.

(Gina):   Thanks Amr and thanks for elaborating. (James)?

(James):   Hi, thanks. James speaking. Trying to remember when I threw up my card. So I think just two quick points. I think that to Kavouss' previous intervention, I think that we were cautioned if I remember correctly, Alan, Stephanie some others that were smarter than me might remember there was a letter from the European authorities that said something about being very careful not to use squishy language like could or may or couldn't include. That they - when defining purposes, I think they were noting some of the previous letters from ICANN were too ambiguous in outlining purposes and I think that was part of some of your suggested language was could - you know, policies could include, or policies may include or something and that was something that we were specifically advised to avoid.

And then the second part and I think - I'm trying to understand and bridge, you know, shame on me, okay. But trying to understand and bridge this gap between SSR. Does it include intellectual property interest and development

of policy and what that means? And I think we've had some conversations about it. If that could accidentally expand the scope of ICANN which I believe personally is impossible inside the (PDP) but that's another discussion.

So one thought would be if we could say, and I'm texting on the fly here, so is we could say something like the second point. Maintain security, stability and resiliency of the domain name system. And then attach policy development to intellectual property, legitimate intellectual property protection. So for example, and develop, coordinate, policy development regarding lawful access for third party legitimate interest. And I guess what I'm trying to do is I'm trying to attach the part about intellectual property protection and policy development.

Because I believe that the SSR bit is part of it's baked into ICANN's mission and bylaws. But the intellectual property bit can be attached to policy development. So I don't know if there's an elegant way to articular that in language. And I'm already seeing maybe some queasiness from my own colleagues in the contracted party house about even trying to go down this road. But I'm trying to think like if we can say like security, stability and resiliency is over here. Intellectual property is over here, and it's handcuffed to policy development and then we go on with the access for legitimate third party interest.

So that's, kind of, blending two and blending three.

(Gina):   Okay, Benedict has a quick question.

Benedict Addis: Do you see those being in the same purpose?

(James):   I - as I understand the controversy that's simply saying stability, security and resiliency for some excludes intellectual property protection. And for some, by implication includes it. I'm saying let's tease it out separately and attach it to policy development which if I'm not mistaken everything we've done under

the umbrella of ICANN since I've only been here 12 years. I know some of you have been here for the full 20. Everything we've done at ICANN that involves intellectual property protections has come under the umbrella of policy development. And is not necessarily baked into the mission and bylaws of the organization.

So that's - what I'm trying to do is, kind of, say here's our SSR and here's our intellectual property and development, you know, as a function of or as a component of policy development. So I don't know if I've made it worse.

(Gina): Well we're going to find out. The nametags went up. Mark S. was next and then I have Kavouss back in and then I'll pick up folks along the way here.

Mark Svancarek: Yes, I'm dispensing with my intended intervention and instead jumping onboard (James) bandwagon. I think he's really on the right track and I think within the EPDP we ought to pursue the direction that he's saying. I don't want to defer the development of those polices to some other, you know, out of band effort. But I think we ought to dig into what he's saying and see if we can develop it.

(Gina): Okay, good. Thank you. Kavouss and then I'll come to - I have Alex and Margie and then Stephanie excuse me.

Kavouss Arasteh: Thank you (Gina). If I remember for the first time that (CBI) came in, you and (David) mentioned that you would like to mediate between us, facilitating negotiations. So I request you kindly to take that mission onboard. Not listening to left and right, you have to mediate, and you have to facilitate. I understand that one group pushing to put policy development in one order. We have no problem but put it in the proper context. I propose that if people do not want to refer to the security, stability and resiliency of the DNS, you put in line with ICANN mission. Just include that.

Then your refer to the facilitating or enabling so on, so forth. Then you refer that to which include or might include policy development where applicable. (Gina) I put all the options together. Now it is up to you. With the mission that you have mentioned, to put them together in a proper language and come back after the lunch. I am not pushing for the views of one group or views of other group. I now understand that may be acceptable to the people, may be.

(Gina): Thank you, Kavouss. Can you write that down as well? That would be helpful to write it down.

Kavouss Arasteh: I will put it down. Send it to you or give it to (unintelligible). For me handwritten is more simply.

(Gina): Thank you.

Kavouss Arasteh: I always do handwritten even in the bus in the airplane and so forth so on, always.

(Gina): Thank you.

Kavouss Arasteh: I can send it because I'm two finger typing person. Thank you.

(Gina): Okay, so I'm going to go to Alex, Margie, Stephanie and Milton. And then we're going to go to lunch where we fade. Alex.

Alex: Yes, so this is Alex. So I think the meta issue here is really whether we're specific with our words and listing out issues or groups or, you know, types of abuse or we're vague. You know, Number 2, Number 3, these are, kind of, are - these are very broad, vague sentences. And the issue I have, again from an IPC point of view is when I hear and I'm - don't take this the wrong way. Just put yourself in my shoes. When I hear Farzaneh say IP is not SSR. And that's fine. Then I hear Alan Wood say I think basically what he was saying copyright issues, things above and beyond UDRP are out of scope.

That concerns me, right? I'd like to understand that better. Maybe over a beer at lunch we could do that.

So yes, a beer or 12. So I like (James)' approach here which is again, putting yourself in my shoes, IPC shoes trying to appreciate that concern which may be difficult but hopefully we can do that. Can we find some language that makes me and my constituency comfortable, so we can move forward, right? Leaving it vague, I'm very uncomfortable with that. I think putting specifics in, a lot of other are uncomfortable with that. So how can we jump on again, jump on (James)' bandwagon here and find a middle ground. whether it's principles, whether it's some language, I don't know.

That's, kind of, where my head is at and I'm hoping, you know I don't want to talk about Purpose B, you know, until the cows come home. But it sounds like we may. So I'm hoping with that in mind, we can find some language that makes me and my guys comfortable. Makes you guys comfortable and we can move forward.

(Gina):   Thank you Alex and thanks for your flexibility. Will you look at Number 4? I mean it's - does it help to begin to - I know it doesn't have the specificity and I think you're on the money that there's just differing viewpoints around the comfort with the specificity. Does Number 4 start to speak to that ability to go beyond the SSR and develop the policy tied into the IP issues?

Alex: I think Number 4, this is Alex again. Number 4 is missing the important part of what (James) was, you know, was trying to come up with on the fly which is to address the concerns that have that, you know, that IP issues are somehow included.

(Gina):   Okay, thank you.

Man: Sorry, that is missing from Number 4 that we were trying to attach intellectual property interest to policy development. Yes.

(Gina): Sorry, this is (Gina). They're going to type it over. And I'm going to go to - while we're adding that in, I'm going to go to Margie. She's been waiting. Thanks Margie.

Margie Milam: Thank you. I just wanted to reiterate what Mark said and the concept of developing policy for IP interest and address that Alex raised is that it would be done in this EDPD. It wouldn't work for us if the idea is that the access for intellectual property purposes would happen outside of this EPDP, because if you think right now under the temporary specs, there is access for in the temporary specs for intellectual property purposes. So we're not going to be comfortable if there's no resolution of that issue outside of this EPDP.

But to say that we address it later, I don't think is a problem at all. It's just, you know, it's a matter of timing, right? I just want to understand that from the group's perspective that they agree we're going to get to a policy on an intellectual property access in this PDP. And if so, then I think it would work for us.

(Gina): Okay, thank you so much Margie. I had Stephanie and then Milton and we're going to go - we're going get some lunch. I think it's time for lunch.

Stephanie Perrin: Thanks, Stephanie Perrin for the record. Maybe it would be helpful in maintaining the queue if we had the ability to raise our hands in Adobe Connect. That would be the usual way to do it. And then I think that just automatically tells you who came first.

I would - I raised my hand a whole ago because (James) was referring to letters from the Article 29 Working Party and I think at least even if he didn't, but the letter that I would draw to your attention is (unintelligible) 11th of April, 2018 in which they commend ICANN for it's progress, but a number of critical comments in the appendix. And if I may, I'll read you what they say about purpose.

Article 51B: "GDPR provides (unintelligible) that persona data shall be collected for specified explicit and legitimate purposes. In its opinion on purpose limitation, the Working Party 29 has clarified that purpose is specified by the controller must be detailed enough to determine what kind of processing is and is not included. And to allow the compliance of the law can be assessed and data protection safeguards applied.

Not all of the purposes enumerated in the final intermodal satisfy these requirements. Providing legitimate access to accurate, reliable and uniform registration data, for example, does not amount to a specified purpose within the meaning of Article 51B GDPR as it does not allow to determine what kind of processing is or is not included. Nor does it enable the subsequent assessment of compliance or compatibility and case access is provided.

The Working Party stresses the importance of explicitly defining legitimate purposes in a way which comports with the requirements of the GDPR. It therefore urges ICANN to revisit its current definition of purposes in light of these requirements. Moreover it notes that the purposes must be defined in a comprehensive and exhaustive manner. Use of the word includes suggests that not all purposes are made explicit which would also be incompatible with Article 51B of GDPR.

Finally, ICANN should take care in defining purposes in a manner which corresponds to its own organizational mission and mandate which is to coordinate the stable operation of the internet's unique identifier systems. Purposes pursued by other interested third parties," my emphasis not theirs, "should not determine the purposes pursued by ICANN. The Working Party 29 cautions ICANN not to conflate its own purposes with the interest of third parties nor with the lawful grounds of processing which may be applicable and in a particular case."

Now I think that's pretty explicit. But we seem to be ignoring it. Just clarifying (James)' earlier intervention. Thanks.

(Gina):   Thank you Stephanie. Milton?

Milton Mueller: Yes, I think we have again demonstrated why Mark was right that we are really talking about a policy here and not about a purpose. The intellectual property constituency in DC are telling us that they want to be guaranteed that there will be a policy that suits their needs. So it really is not suitable. What (James) is trying to propose is making things worse in my opinion, very badly worse. Because he's trying to jam the policy construct into an SSR of the DNS purpose. And it just doesn't work. It confuses things. It's not going to be compliant with GDPR.

And let me explain when we talk about IPR, we have to be very careful. Copyright is not part of ICANN's mandate, okay? And typically the word IPR includes copyright. ICANN is not set up to enforce copyright. It is set up to enforce certain rights in trademarks that when they conflict with domain names, because domain names are within its mission. So that's one of the reasons we get nervous when we talk about IPR not being within the scope of legitimate third party interests.

Again, under certain laws such as the DMCA in the US, you may be able to get access to WHOIS data through normal legal processes in a particular country. But it's not part of ICANN's mission to make sure that any and every form of intellectual property including trade secrets and copyrights are somehow part of the purpose of collecting WHOIS data. This is just not right. And we're going to have to accept that sooner or later.

So I would have to say that given the fact that the modifications that we are trying to do to Purpose Number 2 proposed by the CPH keep making it worse. I think I can speak for most people in NCSJ if not all, that we're willing to accept Number 2 as it now stands even though we have concerns, but we

think those concerns would have to be addressed during the policy making process for access.

(Gina):   Okay, I know there's a few hands up. But we are going to go to lunch. We need a lunch break. Sorry. Thirty minutes for lunch? Two hours for lunch? We're in Spain, Barcelona. Yes, go ahead. (Marika) just is going to outline what she put up.

(Marika):   Yes, thanks. So this is (Marika). So I think all the language that we've received now is up here including the updated version of four that (James) has modified. And one that was submitted by Kavouss. Note that for EDPD team members, there's lunch in the room in the back, you know. Observers, please wait for the team to first have their lunch so we can get started quickly again as well. So.

(Gina):   Thank a 30-minute lunchbreak. Thank you everybody. And thanks for your patience, those who had their hands up.

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