

**ICANN
Transcription
EPDP Team F2F Meeting
Monday 24 September 2018 at 2215 UTC**

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Man: Yes, and I think one of the reasons that ran on is that we were doing that sort of really fast paced iterative thing up at the front with the text, and we made some progress. And so what we're going to - right now. I'm going to ask one of the people up in the group up at the front which is Diane Plaut just one of the voices up there. Summarize what happened with this group, right? Which is this group feels like they got to a place where they could have a purpose, so we could test in the matrix later, right? It doesn't mean everybody's happy with it. Doesn't mean everybody's think it's going to make the grade once we do the matrix example, but it's something it may let us go forward on that.

Then what we're going to do is quickly talk about A. And then (Caitlan)'s going to give us an example about how to use the matrix. Depending what time it is we're going to home. They were really happy with our first day. Then we're going to come back tomorrow then we're going to start throwing the

stuff into the matrix between the exercises, okay? So that's what we plan to do for what time we have remaining today.

So Diane Plaut's going to give us a vision of what happened up here. We can have a quick conversation about it. If you are also okay with letting that go forward into the matrix analysis. We're going to deal with A which we haven't dealt with. Then we're going to give an example how to use the matrix. Maybe we'll just go (unintelligible), okay. Diane Plaut do you want to give a quick, you know, group got to? I don't know if you speak from all the way back there and you'll need your mic.

Diane Plaut: Okay, well I think that we all tried to take what James Bladel put forth and really make the most of it because what he put forth seems to be a hybrid version of what Benedict Addis had suggested. And -

Man: Diane Plaut closer to you mic, please.

Diane Plaut: Oh, pardon me. And what we're trying to do is come to some type of middle ground here. And the reason that this is an important step forward for everyone is that in appreciated what (Stephanie)'s been saying all along of the need for the ICANN - whether ICANN is going to change their construct on addressing certain legal framework and responsibilities. This provides us to move forward from a policy standpoint by allowing the contracted parties to have certain assurances of identifying ICANN org in supporting the framework to enable ICANN org (unintelligible) and what's labeled H for access to registrant, registrant, registration data. That is within the purpose and bylaws of ICANN. And that supports what is a very broad purpose of ICANN org.

And then to secondly have the second portion of that being the enablement of the ICANN community to have access for legitimate third party's interest is what further identifies an ICANN purpose, but it ties it together with the fact that ICANN within its scope has the steps in as a facilitator of the access for

legitimate third party interest. And the reason that we think that this is really helpful is because even though we appreciate that we're going to have to go through this - the separate analysis through what Thomas Rickert has created and the matrix. This provides the starting ground and the general language to get everyone over the comfort level to know that within the scope of ICANN's mission is legitimate third party interest access and that those third party interests while they need to be identified can be identified specifically still within this policy document. But it provides these general purposes.

And enables us to then go on and to only limit what these purposes are for these already existing data elements. And we will come together. Milton Mueller, James Bladel, Thomas Rickert we've been Alan Greenberg and we've discussed the fact that this could provide a middle ground for everyone to feel that they're concerns have been addressed.

Man: Others who are in the front of the room, are there different ways to clarify that? Other things you'd like to make sure are said based on what happened up here? I'm (unintelligible) or we could have language our point. And I want to doublecheck with people in the front of the room. In addition to the time we spent over here talking about that facilitate legal action to assume a third party interest (unintelligible). Folks were on at the other up at framework. So others who are at the front of the room, in addition to Diane Plaut's description, do we need to clarify anything that was set up there? I see Milton up.

Milton Mueller: Yes, Milton Mueller, my understanding is that this compromise - the compromise is we would accept this as an ICANN purpose even though it's really a third party legitimate interest. And that would eliminate H, I, J, K and L from the discussion. And it would eliminate those other two things that were discussed before by James Bladel. So that that would be an all purpose substitute that would assure the people who are concerned about access that

this would somehow be built into ICANN's purpose without expanding any kind of data collection. That's the basic bargain there.

Man: Okay to be clear the idea there and Diane Plaut I'm not sure this is how you understood it to be. The idea was that this particular piece and we just put it up on the screens here too. So I know it's hard to read up here and I apologize. That would deal with this other suggestions that are up on the side here. So these essentially go away. This is the thing that would - you would want to carry forward and see if it works with the work of going in.

Benedict Addis: Hey guys. Benedict Addis. That's (unintelligible). In the minds of the drafters, did you have the idea that this is data that ICANN is accessing to do investigations, compliance enforcement security, internally or did you envision something else?

Man: (Unintelligible).

Benedict Addis: Sorry, the first point. Or was -

Man: I think this is actually going away. Can anybody correct me on this? I think the idea is this all goes away. This goes away, and you're just left with the third party.

Benedict Addis: So purely the statement on the screen.

Man: Yes, that's what I understood from those of you who are sitting, standing up here around.

Woman: And we carry it forward to go to the next stage to walk through the data elements worksheet. So because part of its to confirm that the data elements are consistent for this purpose as well as the combined C and D.

Benedict Addis: So where is the statement that this depends on that creates the purpose for the collection that is already - for the data that's already collected?

Man: Okay, great question. Let's take some - I see a hand up here, a hand there. (Unintelligible) you want to kick us off there?

Margie Milam: Sure if you could explain. This is Margie Milam. What you mean by legal access. I don't understand. What's meant by that if somebody could explain that.

Man: There's two things on the table right now. One is explain the legal access. The other is where's the basis of the data collection and then the first, yes.

Margie Milam: Okay.

Hadia Elminiawi: Hadia Elminiawi so of course this one lacks the purpose for the data collection. So it says for data that is already collected. But what is the purpose of the data that's being collected? So I think the answer to this is keeping C, D. So C and D gives the purpose for the data that's being collected which is enable communications or notification to registered name holder. So yes, so these two go together. So C, D goes with this one. And then also I support Margie Milam that the term legal access, legal, the word legal needs further clarification. We need to clarify that we are talking about the GDPR, right?

Man: Right, okay. So we've got those two issues on the table. Let's not lose them, right? One is are we clear the reasons for collecting the data in the first place? This is explicitly not asking to collect additional data, right? Do C and D do that? And then this other issue about what do we mean by legal, lawful? What's that all about. I see - I want to just quick -

Hadia Elminiawi: I had one more.

Man: Okay, can you hang on just one second? I'm going to go to Alan Greenberg first and then I'll go to you.

Alan Greenberg: Yes, in terms of that Hadia Elminiawi said, I don't think C and D is enough, because that's only administrative and technical, not necessarily the other pieces of data we collect. I too have worries about the word legal there. And -

Man: I think lawful is what the drafters wanted there. And I think maybe (unintelligible) is legal. I think lawful.

Alan Greenberg: Well there's a term in GDPR about, you know, that it has to be legal within GDPR. I can't remember the exact word right now. I'm getting a little bit tired. There's certainly legal justification for law enforcement to get data. There's not necessarily legal justification for cybersecurity people to get data. And yet I believe that that's one of the core requirements we have because ICANN - within ICANN's mission is to ensure the stability and security of the network and that's not a function that is done purely by law enforcement. So the question is are we being too restrictive there which will end up excluding uses that we believe some of us believe are necessary.

Man: Right, let's answer that question just super quickly in this group. But first Margie Milam do you want to say something?

Margie Milam: Yes, I just want to understand why G is part of that list.

Man: Oh, I don't know. Maybe it isn't. Wait Margie Milam do you think it's not?

Margie Milam: Yes, but I wasn't in that group, so I don't understand.

Man: Okay, so let's leave G out for a moment. We have (unintelligible) before I go to (unintelligible) folks with their hand up. Okay, that's right. This morning, okay it is (unintelligible). Just give me two seconds, I promise.

Man: Let's start here, then I'll go over here.

Alex Deacon: It's Alex Deacon. Yes, I was part of that conversation up front. I don't remember G being in the mix. So I think, you know, I agree that we should put it aside for now.

Man: No? Some people okay so G is to be resolved. Okay to be resolved, all right. Diane Plaut do you want to?

Diane Plaut: To Margie Milam and Alan Greenberg's point, I too was - had explained that I don't think the word legal should be in there because it's really not. This is the policy and it's not going to be for within the scope of this to make a determination about what's legal is or not is. That's going to be down the road for whoever, in fact, is providing the access and legitimizing the third party interest from whatever model is later created. So it would - it could be better explained if there is a need for any word before access instead take out legal and then say access for third party interests which are the lawful basis is - of which are identified, you know, something like that.

Man: Okay, great. So and I think just for those of you who had raised concerns about legal, does that feel right? So to access, you know, lawful basis are identified is that better? Quick.

Diane Plaut: I mean that's just what the model is going to need and require eventually anyway.

Man: All right, so I'm going to go on right now. Then I'm going to head over to Milton. Here comes.

Woman: So yes, looking at the other purposes, a lot these that we have on here are very specific. And then G, all of a sudden zooms way out and is quite vague. And it's almost to the point of read like some sort of guiding principle under

which access may be provided to certain third parties but doesn't look like a narrow purpose as the others do. So I think that it's too vague and broad and not sufficiently specific to serve as a concrete purpose which is why I would suggest binding it with the others that we have identified B1, B2 and then the others on the other page and remove it. Yes.

Man: Okay, (Colleen) just on that, I mean (unintelligible) we had emerged be a little bit into what's been written here, right?

Woman: No, but I don't think that we would want to merge G. The problem with G is that it's too broad. It's too nonspecific and vague. So merging G with for example I don't know S, E.

Man: No, I think it went to the wall here.

Woman: It will take legal access.

Man: Right, it doesn't have the world accurate or reliable. And it doesn't have the, you know, suffix of not outweighed by the fundamental rights, etc.

Woman: Okay, well then the conversation superseded my comment from this morning.

Man: Okay, so you're good with this, yes.

Woman: So is there anyone who wants to argue to continue G? Margie Milam.

Margie Milam: Absolutely.

((Crosstalk))

Man: Sorry, I just want to doublecheck. Milton, is your thing on G?

Milton Mueller: Yes.

Man: Okay, (unintelligible) go first and then Margie Milam.

Milton Mueller: So the whole point of this compromise was that the people who are very concerned about getting access to data are not going to be happy unless something about that is included in the purposes of ICANN. So this compromise is intended to make them happy without doing any damage by authorizing new forms of data collection that could get out of control and expand the mission of ICANN, etc.

So if you look at G, there's actually very little distinction between B1, B2 and G when you think operationally. They are all about getting the data and allowing the registered name holder to be contacted or identified or, you know, third party interests are listed in all of them. And this compromise has been designed to facilitate replacement of all of those. Not only H, I, J, K, L which has been left off here. But G as well, because they're all fundamentally doing the same thing.

It's other than that on the issue of accuracy, the only thing that isn't included in the compromise is the concept of accurate and reliable and uniform registration data. But, you know, accuracy is required by the GDPR anyway. It's already required by ICANN policies. You don't need to put that into the list of purposes. That's a separate issue that's not - nothing's going to be lost by not having the world accurate in there. And the, of course, the data's going to be uniform because it's the same data elements, right? So I don't think we're losing anything by not having G.

Man: Excellent, okay, thanks. Margie Milam.

Margie Milam: So what I would propose is you'd say facilitate legal access to accurate, reliable and uniform registration data for legitimate and you pick up the language. So you still ensure that you're not adding new collection of data that address Milton's concern. But I do have a strong objection to removing

accuracy as one of the components, because that was actually called out in the European Commissions letter to ICANN in the technical input where they say, and I can read it. Every reasonable step must be taken to ensure that that data - personal data is - that is inaccurate having regard for the purposes for which they're currently processed are erased and rectified without delay and so accuracy in my views are very important component of what we're doing.

And so I would suggest if we just put in those words accurate, reliable and uniform registration data, then we can keep with that language there. Thank you.

Woman: Margie Milam could you just repeat the language one more time for me?

Margie Milam: Sure, I'm suggesting facilitate legal access to, and you pick up accurate, reliable, and uniform registration data and then you pick up the rest of the language for legitimate third party interests.

Woman: Okay.

Man: I thought we dropped legal. No?

Man: Lawful is where I think we want it to be, but it's again hard to do this in real time. But I think lawful felt like the right word. Okay, let's say we're going to do lawful. Everybody okay with that? And change to lawful and there's this debate whether you need those three words in there, the accurate, reliable, uniform. Okay, so and I'm hopeful that this line with this comment (Georgios) and then Alan Greenberg, Thomas Rickert are you - what do you want to talk about?

Man: Thanks very much. First of all I'd really like us to move to the matrix and work on the specific processing activities as soon as we can. Again, this compromise language is just to make sure that nothing gets forgotten. And I

think that we should all be clear that accuracy should not be construed in a way that additional validation requirements are establish for contracted parties. What accuracy means in the context of (unintelligible) GDPR is that those who are collecting data make sure that it's accurately put into their system as provided by the person providing it. And this is why we have rectification rights for the data subjects. So if the collector messes up writing the correct data in the database, they have the right to rectify that - get that rectified at short notice.

So and also with respect to legal versus legitimate versus lawful, Article 5-1A says lawfully because therefore it's intentionally done by those who drafted the GDPR. That it's not only legal in terms of GDPR, but lawful because it also needs to incorporate the human rights charter and other legal sources that we have to abide by.

So my plea is let's just keep it like that. It's a placeholder. We have to go to grate levels of granularity. Once we put that into the matrix and talk about the needs of the various requestors for that data. So this is - this needs to be revisited. Let's get over it for the moment.

Man: Okay, great. We're just (unintelligible) you done.

Man: Mainly what Margie Milam said covered what I wanted to say. I just want to point out again that putting things and supporting the accuracy and reliably of data is actually to the benefit of everybody if we want to pursue a purpose here. I don't see how this can be done without having those data accurate and reliable. I don't know where we are going to put that. If it's going to be here or somewhere else. But it has to be there. It has to be supported by the process.

Man: Right. It needs to be there somewhere. Maybe in this sentence, maybe not, okay? Great. Alan Greenberg.

Alan Greenberg: Thank you. It's Alan Greenberg for the record. I'm in violent vehement disagreement with Thomas Rickert and disagreement with Margie Milam and (Georgios) unfortunately on this one, because (unintelligible) said everything I wanted to say. I also want to point out that the inclusion of a word such as accuracy and -

Man: Wait, I'm confused.

Alan Greenberg: Sorry.

Man: What are you in disagreement with? The fact that accuracy is something that we need to focus on. It's not. It's as Thomas Rickert described. It's in the relation to the data which you have taken is correctly and accurately put into your system. Not that it is itself accurate. We get it directly from the data subject. One must assume in that instance in the data protection instance that that is then accurate. That's all the data protection process. Anyway that's beside the point.

My other point is that accuracy is not a purpose. You can't say, you know, in purpose that it must be accurate data. That's not a purpose. It's a statement - it's what's the word I'm looking for? My brain is not working. It is -

Man: (Unintelligible).

Man: Yes, it's a principle thank you. And it's in the GDPR already. So we do have to follow the law as well. We don't have to rehash the law within the text of a purpose. It's in the law. We have to follow it.

Man: So I'm going to do something here. In the spirit of moving on, I'm going to say after we're done today, I'm going to have Margie Milam sit down with Benedict Addis and Thomas Rickert and others when (Georgios) is a part of that. And figure out how you might deal with this concept of accuracy in this way or other ways. All right? And in a moment, I'm going to put it in brackets

if we can, right, accurate, reliable and uniform. Let's put it in brackets and say that's a detail that we can resolve later. Put it in brackets on not use the force, whatever the expression is, that forces the (unintelligible), that one right? Oh, is that all right? And Margie Milam would you be okay sitting down and having that conversation afterward? Like where are we going to put accuracy.

Man: Okay so let's if (unintelligible) you can do a version that puts that in brackets. All right. Great. So Hadia Elminiawi bring us home here (Heidi). How - are we able to move on and do the matrix work on this. If not today, tomorrow.

Hadia Elminiawi: Okay, Hadia Elminiawi for the record. Well yes, we are able to move along but I just want to support putting the word accuracy there. And I just want to read something from the ICANN bylaws.

Man: Wait no, don't please. Don't. You know what I want you to do? I want you to put those words from the ICANN bylaws in with Margie Milam. Sit down with Benedict Addis after this meeting and you guys hammer that thing out.

Hadia Elminiawi: Okay, but.

Man: Okay.

Hadia Elminiawi: But nothing extra is required.

Man: Okay, great but I want you to sort that out, all right? Okay.

Woman: I'm going to go to Benedict Addis and then we're going to check in because we have a proposal for what to do next. So Benedict Addis.

Benedict Addis: So that question about data that is already collected.

Woman: Yes.

Benedict Addis: Already collected under drafters? Data that is collected under?

Man: Yes, we'll have to solve that.

Benedict Addis: Yes.

Woman: So.

Benedict Addis: I'd say to data, by the way, not for data, but. It's to.

Woman: Data that's already collected. So what - that kept getting changed. I was there. So it was changed from that ICANN is already requiring to be collected. That was it at one point. And then it changed back to that it's already collected. Can anyone speak to this? Diane Plaut, can you make sure you go to your mic up close?

Diane Plaut: Certainly. I think that we could just say as is already collected and as defined herein. Because through Thomas Rickert's matrix, and through the rest of the policy, we're going to identify all the agreed upon data elements.

Woman: Alan Greenberg go ahead.

Alan Greenberg: Yes, we've talked periodically about adding the field for is this a legal person or a natural person. Since the GDPR differentiates between the two and we at this point do not, I don't think we can avoid that. And I would not want these words to preclude having that discussion.

Woman: All right, so what does that mean? That you don't - wouldn't support having these words in here? Are you okay with them moving forward, but we need to define?

Alan Greenberg: If already collected means we are restricted to the all of the elements and exactly the elements we have today, it means we do not have the ability in

the future of differentiating between legal and natural people. GDPR only applies to natural persons. And I believe going forward, we ultimately have to move to a world where we can differentiate. So I would not want this to preclude that discussion.

Woman: Alan Greenberg I just wanted to say that by adding the language that says it's already collected and as identified herein, then it will cover off on that, because by the time we're done, we're going to do - we're going to identify all the data elements and address that issue. And go for the CPDP.

Alan Greenberg: As long as already collected means at the end of this discussion and not today, yes I'm fine.

Woman: Okay, and then we're adding it to the parking lot so that we don't forget that. It doesn't get lost in this language. So we have another recollection to come back to that. Okay so our proposal is that we go to the next stage and we talk about A, purpose A. And while we're talking about Purpose A, the small subgroup that is going to look at the accurate, reliable and uniform registration data. That you all go talk about that while the group continues on with A. And then we'll come back together. Is that all right? So we're going to -

So this smaller group which was Margie Milam. Was it - could you raise your hand if you were in the smaller group? Those with your hand up, can go out. Go out on the couches. And either reconcile and address questions and concerns around accurate, reliable and uniform registration data. Okay? Small groups. The rest of us stay here and we pick up the Purpose A. Pick up Purpose A and we're going to see if we can address Purpose A. All right? And then we'll come back tighter. Is that okay with everybody? Okay.

Right now, okay. The question is should we have one person from every stakeholder group? Sure, that's a great addition. So your charge small group is to figure out how to wrestle with the bracketed language. Is how to wrestle

with the bracketed language. And then we've had a friendly amendment that we have one representative from each stakeholder group to go wrestle with that language.

Woman: Just a note. (Terry) is checking if there's a meeting room available for you to sit in for those who are stepping out. So Thomas Rickert, they could if they're a big group. Thomas Rickert - Terri is checking if there's a meeting room available so if you just hang out there a second...

Woman: It power on small groups, you can do this. We're excited about the small group. (Caitlin) from staff will go as well to take some notes for us. Okay we're making progress. Is everybody feeling like we're making - creative moving? No. Okay we're going to go on to number, letter A, letter A, of the purposes reflect the rights of a registered name holder in a red registered name and ensuring the registered name holder may exercise its right in respect of the registered name. That's a mouthful. Who flagged letter A, for discussion and could you please frame up the issues and if you want to even move us towards proposed language that would be great.

Kristina Rosette: The issue is I don't know exactly what -- oh Kristina Rosette Registry Stakeholder Group. -- the issue that I flag with A, is that I think it's really broad and vague. And I think those are two things that we should try and avoid at all cost here. So I had flagged it primarily to have a discussion about what does everyone think it means or what do we think it should mean and then we can make a determination from there. I mean I'm currently agnostic on it in the sense that until I know exactly what it means I can't say definitively but if we're leaving her like this I can't support it.

Woman: Thanks, that you Kristina for bringing that up.

Man: So I guess I'm agreeing with Kristina that is written it sounds like it's identifying the value of being a registered name holder and the value of your data and protecting your rights and that to me doesn't really A, it's not a

ICANN purpose and B, it's not really even a purpose. It – so my inclination is unless someone can phrase it differently so that it makes sense that we just we chuck it.

Woman: Proposal to chuck it trying to understand what it means. Berry, you want to help us with that and I'll come to you Stephanie?

Berry Cobb: Berry Cobb, with ICANN staff. I can't speak for Thomas Rickert but I will recollect back to his data matrix exercise that he started and the very first tab which I believe was just labeled as collection. I believe he was associating it to this very purpose and of itself. And I believe the general idea is that's what allowed for the general collection of registration data from the registrar and the registered name holder so just to try to put that in context maybe when Thomas Rickert comes back of the room he can provide more clarity around that.

Woman: I have Stephanie then Chris Disspainwants to get in and back to Alan Greenberg.

Stephanie Perrin: Stephanie Perrin for the record. As I said earlier when I was trying to bullet these purposes it's really to manage the fulfillment of the contract. So it goes off into registrant rights but the right involved is do I have the right to have this domain name? So that's the fulfillment of the contract, you know? And you can't enforce that right if you don't gather the name and some of the details about the individual. It just, you know, otherwise you're never able to ascertain who owns the domain name.

Woman: (Unintelligible) question.

Man: But is that a purpose and is that an ICANN purpose?

Stephanie Perrin: It's absolutely about the only valid primary purpose for gathering data from the registrant its so that you can give the registrant the rights to a domain name that's - that is the most legitimate purpose there is.

Woman: Chris Disspainis next in the queue so maybe he can address that.

Chris Disspain: So I agree that it's an important and legitimate purpose but is it ICANN's, sorry I apologize. So I agree that it's an important purpose. And I was looking at it from the point of view of the registrant -- I think you said this Stephanie -- the registrant has certain rights (unintelligible) whatever they may be. And in order for them to exercise those rights then you need to be able to know who they are so they can prove to you who they are so they can exercise their rights. But ICANN doesn't do that it doesn't as far as ICANN at the moment ICANN doesn't have any interface with the registrant so I'm not sure how that can be a ICANN purpose.

Man: Can I compromise here for a second and agree with Stephanie but it's a registrar in registry purpose.

Chris Disspain: Yes.

Man: We collect the data so that we can establish the rights of the registrant to a domain name.

Chris Disspain: Which to be fair is what it says on this chart that it is a registry and registrar purpose.

Woman: I'm going to come back to Stephanie. Let me go to Alan Greenberg because he's been waiting and then I'll come back and maybe and see if we move this to the registrar and registry. Alan Greenberg?

Alan Greenberg Yes when I first read this I didn't understand what it meant at all or why it was there. The second half of it one of the examples that is embodied I think by

the second half is we have to make - we as ICANN need to make sure that enough data is collected so for instance you could exercise your intellectual property rights and file UDRP because if you – if we haven't forced that information to be collected we don't know who it is to file the UDRP against. So that certainly has merit. And I think the first part is necessary if you're going to exercise a second part. So it may well make some sense as an ICANN responsibility to make sure that the name we are granting you we through our intermediaries are granting you is enforceable on the long term.

Woman: Got Stephanie, Kristina, Chris Disspain.

Stephanie Perrin: The problem -- Stephanie Perrin for the record -- not to beat a dead horse again but the problem is sorting out the accountability. I mean ICANN as data controller has a responsibility as the quasi-regulator to set the policy. So, you know, either we completely transform how what authority ICANN has or they're a data controller basically shifting this accountability and responsibility on to the registrars as the accredited registrars.

Woman: Thanks Kristina.

Kristina Rosette: So Kristina Rosette, setting aside for the moment the question of whose purpose it is it sounds to me that if we, and I know there is some inversion to kind of drafting on the fly, but it seems to me that if we make one minor word change that we may at least reach some agreement on what A, is supposed to cover. And that would be to change reflect to either evidence or substantiate but that's really what we're talking about establish that would be fine too.

Chris Disspain: Thank you. And I think that's a great idea but I just wanted to say having thought about it and talked to (unintelligible) it's actually ICANN does have the purpose because from a compliance point of view for a start there are many instances where ICANN needs to know that the person they're dealing with is - close talk louder anything else, any other instructions? ICANN does

need to have that information so but I think the change that's been suggested works and establishes is fine. Thank you.

Woman: Okay so we are establishing, to establish the rights of the registered name holder, registered name, (concerning) that the registered name holder may exercise its rights with respect to the registered name. So - and that, that is an ICANN purpose. Is there anyone who would argue that it's not an ICANN purpose? Okay back to you James Bladel.

James Bladel: Again I'm just struggling with how that's an ICANN purpose. It is a purpose for registries, a purpose for registrars obviously the registered name holder has strong interest in that being done correctly. But Chris Disspain you're saying compliance and...

Chris Disspain: Well how could we uphold – how could we accept a complaint about a registrar if we can't say who the registrant is if the registrant is supposed to be the person making the complaint? If we can't use...

James Bladel: Help me with complaint.

Chris Disspain: I don't know, I've never complain about...

James Bladel: Okay. So as compliance functions usually the complaint is coming from a registrar. I don't know really what steps ICANN takes to verify they either take this complaint on board and say essentially it's the contract between the registrar and ICANN that they would determine whether or not they is in breach. They're not I don't believe they're saying we are here to stand up for and enforce the rights of the registrant ICANN says we're establishing our own rights under the RAA not the registrant so because ICANN doesn't have a contract with the registrant. o I mean help me out somebody I mean what you think Dan is this a purpose of ICANN?

Dan Halloran: So I think I'm just responding to the question on the table about ICANN orgs use of it. I don't think we would ever - we never try to get to the bottom of who the actual registrant or is this person who is contacting us really the registrant. We take, you know, that's up to the registrar to figure out who its customer is. We'll take a complaint pretty much from anybody but we usually forward them on to the registrar and what we're looking at is the registrar complying with its obligations to ICANN the obligations between the registered name holder and the registrar between the two of them really.

Chris Disspain: So (unintelligible) is it okay so...

((Crosstalk))

Alan Greenberg: Sure why not.

Chris Disspain: Thank you (Al). So just to be clear then Dan and I'll back off because I'm fine with that you're saying you can't see that ICANN has a purpose in establishing the bona fides of the registrant.

Dan Halloran: ICANN org.

Chris Disspain: Yes.

Dan Halloran: Yes generally I don't think we get into figuring out if that really is the registrant or if that person who registered the name really is...

Chris Disspain: No, I've got it.

Dan Halloran: ...the person who is listed in the Whois?

Woman: Thank you Alan Greenberg for waiting. Please go ahead.

Alan Greenberg: Thank you. I don't see how we can enact the UDRP unless we also ensure that we are collecting the information to allow it to be exercised. So we must mandate that it be collected so that it can be used in something such as the UDRP.

Woman: Okay.

Alan Greenberg: And that's one of the rights...

Dan Halloran: ...that's under M. And that's the panelist the UDRP panelists that the dispute resolution provider that provides that function. So...

Alan Greenberg: No, no, M establishes that process but I don't see how we can do M unless we have made sure that we are collecting enough information to both the registrant to allow that registrant to use that process. It's collecting.

Woman: Diane Plaut.

Woman: Microphone up close.

Diane Plaut: I'm just thinking that everybody is really on the same page here and that basically what James Bladel is saying is, is that since the registrars and registries are the ones that are initially collecting the data that, that would be their purpose and responsibility. And so really if that purpose exists under A, for the registrars in the registries and M continues to exist for ICANN then maybe that solves, you know, the needs of what is being said here by everyone. So I think that, that may be could be the middle ground.

Woman: I thought yes but can I just go back and ask Alan Greenberg a follow on because Alan Greenberg I mean what I hear is your concern is that ICANN meets the data for the dispute resolution in M?

Alan Greenberg: No, no ICANN needs to ensure the data is collected. ICANN itself does not need access to that data necessarily. And if we make it solely a registrar registry responsibility what in this hypothetical situation they decide to stop collecting it we still have the UDRP which requires it.

Woman: Okay. Dan.

Dan Halloran: Yes Dan Halloran ICANN org. I understand Alan Greenberg's point. I think it's different from what was in A, which was really about the about the registrant's rights and make sure the registrant because we could be talking about anonymous domain registrations here but it's been decided that registration data will be collected from the registered name holders so that that registrant can assert rights in that name including, you know, the UDRP is one I guess example.

But I think that's really more about third parties asserting rights on that name. Transfers comes to mind as a place where a registrant might want to assert the rights to be able to transfer that name to a different registrar and therefore there's some registration data associated with the name they can go to a different registrar and transfer the name under ICANN policy. So I think UDRP is a little different but...

Woman: Does that change anything Alan Greenberg?

Alan Greenberg: Yes UDRP was an example. It may not be even the best example, transfers is a good example that the right is exerted by the actual original registrant. I simply think that we if we're going to have a transfer policy then we have to make sure that, that information is collected. So yes it's not collected by us we may not use it but I think we have to make sure that it's there.

Woman: Thanks Mark Svancarek.

Mark Svancarek: I think I mostly agree with Diane Plaut. I think we're actually pretty close. I do know that Margie Milam has on occasions mentioned that there are times during the dispute process where there is a conversation with ICANN regarding the accuracy of, you know, the accuracy and identity of some party well where ICANN says well I don't have access to that data so I can't help you. I'm not really sure that, that legitimizes A, so much but Margie Milam is not in the room and that's just what I wanted to mention.

Woman: Okay. I get James Bladel and then I'll come back to you Diane Plaut. James Bladel, can you help us with this question around the necessity of having the data for different purposes for dispute resolution or transfer and the concern that the registrant, registrars might not collect?

James Bladel: So I think that we're required to collect it for other purposes. So eliminating this does not eliminate -- this is James speaking -- does not eliminate the obligation and the requirement to collect the data. I would submit to you that all of the functions including UDRP and transfers well first of all transfers are in kind of a weird place right now under the temp spec but transfers do not require this.

Unfortunately transfers now are much more vulnerable to hijackings and disputes but they are much more expedient in that they don't require any Whois information, so there's that to trade off. We may but I think other functions I would say all of those things could happen for example in a domain name that is engaging with a privacy service where ICANN does not know the underlying beneficial user of or the identity let's say of the individual or the individual registered name holder.

So I think and to your point (Mark) accuracy is a kind of a weird thing because sometimes in our context we say Whois accuracy means that the information that is contained in Whois actually works to contact the individual that put the information there whereas I think accuracy in terms of the data

protection law means that whatever we were provided we dutifully entered into the database without error or omission...

Man: They're actually resolving this in the other room.

James Bladel: Okay.

Man: That accuracy is an overloaded term.

James Bladel: It absolutely is. And of course we are always in a situation where the people who seek to do ill on the Internet they just lie and they give us bad information which we dutifully record into the registry. So but I just, again I feel like this is I don't want to say not important I just want to say it doesn't belong here under the ICANN purposes.

Woman: I have Diane Plaut, (Giorgios), Kristina and Stephanie. I'm not sure (unintelligible) but Diane Plaut I know and then I'll come (unintelligible).

Diane Plaut: I'm sensitive to the fact of what Alan Greenberg is saying is that how about if the registrars and the registries no longer provide that information but it seems that we have enough safeguards to prevent against that because as James Bladel said that they have to collect it for other information. And then we have the safeguard, you know, depending on what happens with the accurate reliable language we have that cushion to know that they would have to, you know, provide that through keeping up to date information.

But everybody needs to also remember the really the language accurate, reliable and up to date information comes from the GDPR based upon the data subject through a data subject access policy having the obligation as a data subject to keep – to provide accurate and up to date information. And then it would be the registrars of the registries that would then have policies which would say we ask you to please provide this but they certainly can't

force, you know, the data subject they could only do what they could do so they have somewhat limited powers in that regard.

So but when it comes down to it there, the safeguard to protect what Alan Greenberg is concerned about that how about if the registrars and registries no longer want to provide that assurance and it's not listed as a ICANN purpose just to ask James Bladel for a little more information about is there – are there other places within the contractual relationship that, that could be, you know, I assumed to be something that will continue.

Woman: Okay, I'll come back to you on that James Bladel. Raul Gosain thanks for waiting, I'm sorry.

Raul Gosain: Yes I'm not sure if I understand this fully but just I think what James Bladel pointed out in terms of ICANN not having responsibility for establishing (unintelligible) a certain name holder at that point. I would tend to agree with what Alan Greenberg has said and there's been some consistency in what James Bladel lists and (Dan) ratified. However I am a bit confused about this to my mind ICANN position is central in this whole aspect because in the absence of an overarching umbrella for some kind of a dispute resolution or some kind of a unique identification to establish the rights how on earth do we possibly intend to do that. And it is for this purpose that this policy specifies the kind of fields which are going to be collected uniformly across the different (unintelligible). So my understanding is that ICANN has a central purpose in this.

Woman: Thank you so much Raul Gosain.

Raul Gosain: But I stand to be corrected.

Woman: So we'll try to get clarification along the way for your question with you. Kristina?

Kristina Rosette: I'll actually just yield to James Bladel if he wants to respond to that.

Woman: You can respond to that as well as (unintelligible).

Dan Halloran: I will yes to Diane Plaut's question. I think if we establish it as a purpose for registries and registrars than it can be an obligation in the contract and in the policy and we're good. It just, it lives in the requirements, and I'm speaking to Alan Greenberg now, it lives in the requirements it just doesn't live here it lives in those other two sections.

And then the second thing is everything that you guys are saying is correct is that, you know, registry name holders have rights on a registered name and that ICANN as an organization has a responsibility for those. But what I'm saying is in practical terms ICANN does not have a function where they come to a registry and registrar and say I know who the registered name holders for this particular name and I am your to stand in for their rights in this matter or that regard. That just, that function just does not exist.

So again it just kind of leads me to this belief that it's the responsibility of the registries when they have it it's a responsibility of the purpose of the registries for the purpose of the registrars. And ICANN certainly has a role to play in ensuring that those two parties comply with the policies and the agreements that require them to manage and respect those rights but ICANN's role is to enforce the process not to enforce individual rights of a register name holder and so it just it isn't a ICANN purpose.

Woman: So I'm going to go to Stephanie, I'm sorry do you...

Dan Halloran: Yes, yes I'm going to say finished. I probably ran out of ideas 40 seconds before I stopped talking.

Woman: What I'm going to do is Stephanie is in the queue. And since we have our small group came back which is a good sign I'm going to recap where we're

at and then I'm going to come back to you Alan Greenberg to see if you - if this addressed your - the fundamental concerns you brought up. So Stephanie you were in the queue thanks.

Stephanie Perrin: Thanks very much, Stephanie Perrin. This issue of accurate data we seem to be conflating ICANN's desire to have accurate up to date data and uniform up to date data with a requirement on from GDPR to demand uniform accurate up to date data. And the individual has a right to update their data and replace outdated data in the record but it does not follow that the data controller has a right to continually update data. The data that they hold is necessary for the purpose for which it was gathered and that usually does not include a perpetual mandate to change the data.

I would argue that contact ability remains a constant. That contact ability data needs to be updated but not everything else. So that's a conflation that I think is dangerous. And it's not unusual at all in the instance that James Bladel was describing namely the transfer policy to require more detailed data when you are making a change. So an example is when you can buy a garment cash if you bring it back to the store they will demand data about you for their purposes because you're getting a refund. It - they didn't have it in the first place when you bought it. So that would match with the requirement for greater data in the transfer policy sorry I am being pedantic, put everybody to sleep.

Woman: Okay, thank you Stephanie. So let me just summarize for the people who just came back into the room and then I'm going to check in and see if we might have a resolution. So we are on Purpose A, for the ICANN purposes. And there were questions about what it (unintelligible). So there was a slight modification of the language. The first word it said the purpose originally said reflect the rights and we've clarified that it is to establish the rights. But that's the only modification so that everyone had greater clarity on purpose?

There has been a proposal to take this out of the ICANN purposes and only have it under the registrars and registries which is it's in there right now. But the concern was that and some confusion that this information is fundamental to ICANN being able to fulfill certain processes such as transfer the data or dispute resolution. And so there's a need - and a concern that if it's not an ICANN purpose that data might not be captured or collected.

And so in order to ensure the safeguard heard from James Bladel proposal to establish in the contract that the purpose with the registries in the registrars and that in ICANN's contract with the contracted parties that they would include this element that they would be able to ask? And so I want to go back to Alan Greenberg and then I will join into the queue but Alan Greenberg does this proposal with outlining this in the contact address your concerns around your safeguarding ability to collect the data.

Alan Greenberg: I don't know. James Bladel said the contracts will require that the data be collected. Our job here is to essentially rewrite or create a policy which will cause the rewriting of all of the parts in the contracts related to Whois. That's what the PDP is doing. If it's not our - if what - and if it's not in what we are doing that it will be required that these fields be collected where is it going to be.

James Bladel: It is.

Alan Greenberg: Okay.

James Bladel: It's on Page 4 and it's on Page 5.

Woman: Under the purposes for registrars and registries.

James Bladel: Under the purposes for registries and under purposes for registrars. It's just needs to come off Page 2.

Woman: Under the ICANN...

James Bladel: Under the ICANN purpose. So ICANN's purpose I think put it this way the registries and registrars have this purpose. ICANN's purpose is to enforce the contract which will have those purposes on registries and registrars that's not the purpose that's their remit.

Alan Greenberg: I'll accept pending seeing the whole thing.

James Bladel: Okay.

Alan Greenberg: I'm not. I'm still not 100% convinced...

James Bladel: It doesn't go away.

Alan Greenberg: ...it doesn't have holes in the bucket...

James Bladel: It doesn't go away the data collection does not stop it simply moves to specifically an ICANN or sorry (unintelligible)...

((Crosstalk))

James Bladel: Thank you registry and registrar purpose.

Woman: Okay. So we have resolution of that issue but I have I think but I have Thomas Rickert and (Benedetta) at trying to get in. So let's check in with them and then we might be old to move on.

Thomas Rickert: Thanks so much, it's Thomas Rickert for the record. I think that this very purpose the one purpose that I think we should all agree is pursued by registries, registrars and ICANN. ICANN is not only offering a framework for registering domain names technically but the service that you get from ICANN if you wish is that registrants are associated to domain name. And this

is why all the security stuff the escrowing, the bureau kicks and so I think it's is at the heart of what ICANN is doing.

And I think and it's probably worthwhile reminding everyone that somebody who is a controller which I think ICANN is in this case doesn't necessarily have to obtain the data that is being processed. So ICANN can pursue that purpose. And I think this is really at the core of what ICANN does in the gTLD world with all of the extra bells and whistles that it establishes in its contracts and policies.

Woman: Benedict Addis.

Benedict Addis: Just a little support of Thomas Rickert. This is almost a purist statement of what ICANN exists to do. This is the function of ICANN stated the most succinct I've ever seen it.

And all of our pickle, all of the idea that we're getting into that we have to go and look for these little purposes within ICANN -- the oh we might be able to find contractual compliance, we need a bit of registration data, we might need to find a URS purpose -- are totally irrelevant because as Thomas Rickert says, we don't need to see a single pattern of registration data processed within ICANN in order for ICANN to have the strategic purpose of keeping the registration system working. It can direct others in a quasi-regulatory way.

It sucks. It sucks that we're having to do this. It sucks that we're all here. It should be a straight 6(1)(e). It's a public task.

But unfortunately, ICANN is not a public body. So we have to rely on this weird, we're not quite acting directly under contract because we don't - ICANN doesn't have a direct contract with the registrant. We don't have a 6(1)(e) public task so we're somewhere in the middle.

And we have to acknowledge that there is a larger purpose here, which is the strategic function of the system. We can't lose A. It's absolutely critical to ICANN's existence. Thank you.

Woman: Go ahead, Alan Greenberg.

Alan Greenberg: I think I've just...

Woman: We'll go to Alan Greenberg and then I'll come back to you. Alan Greenberg?

Alan Greenberg: I think I've just heard Benedict Addis and Thomas Rickert say we really should keep this because this is the core of what we're doing.

Woman: You did hear that.

Alan Greenberg: Okay, so. I just don't understand why there's so strong objection to keeping it in if it is indeed a core thing and it's going to be done anyway.

Woman: Go ahead.

Alan Woods: Thank you. It's Alan Woods, other Alan Greenberg. There is a caveat in that of course. And that is where ICANN accepts that it is a joint controller and there are proper contractual elements put in place such as a joint controller agreement. I mean, we have to be clear on that. So just flagging that, that there would be caveats on that for me.

Woman: Go ahead, (Jack), to you.

(Jack): It's not a very - because we've got - and this is - and I'm not here tomorrow so...

Man: Bring it on.

(Jack): And we've got (Dan), we've got (Dan) and (Trang) here. So I have a question because I hear that a lot. And I hear also from others that this, you know - and (Stephanie) and some other folks, people who are a lot smarter in GDPR than I am, that we never did this roles definition. We never established all these things. ICANN never acknowledged that it's a data controller. There's no joint controller agreement.

So what do we need to do those things? And I'm asking ICANN Legal. Why is this always kind of thrown up as a well we could make progress on this issue if we had this joint controller agreement or if we had ICANN say it's a data controller. I mean, is ICANN - is it the ICANN position that ICANN is not a data controller or doesn't want a joint controller agreement? Or is there risks to ICANN.org for that? Or can we just do that and get that roadblock off the table?

Woman: Go ahead, (Dan).

(Dan): Thanks. So I'm requesting what's in the temp spec. The temp spec talks about ICANN as controller, registry as a controller, registrar as a controller.

(Jack): I don't - actually I'm not smart enough to know what I'm asking for right now.

(Dan): Okay.

(Jack): Okay. It's the - it's - it continues to come up that until we or unless we get ICANN to acknowledge that they are a data controller and execute a joint controller agreement -- is that the right term, anybody -- right, and establish the roles of the joint controller agreement that we're going to run into some of these problems.

And my question is, why have we just not done that? I don't - it - I don't understand. And I'm too ignorant to know why we wouldn't do it.

Dan Halloran: Dan Halloran from ICANN.org. So Appendix C in the temp spec has a whole table that lays out where ICANN thinks it's a controller and where the registrar is controlled and the registry. So I think that's addressed, just the part about is ICANN a controller.

The part about doing controller agreements, that's a different question and answer. And I'm not sure what the question is or what the answer to that would be.

Woman: And I'd like Chris Disspain to respond to that, the fact he's the bright one in the queue. Go ahead, Chris Disspain.

Chris Disspain: Thank you. I'm not - I'm not sure that I'm necessarily responding, but I'm kind of asking the questions of why it matters. If your caveat is we're going to say this and therefore this means the following, that's fine. You don't need our agreement upfront. You just say this is our policy and the policy is that you do this and therefore there has to be this. I don't understand why that's an issue.

Man: It's about a (unintelligible).

Chris Disspain: But it's - it would - but yet, well it is. It's a fact. If you come back to us and say, we think this is - this needs to happen, here's our recommendation. And it follows from that recommendation that there needs to be a joint controller agreement, then there's a joint controller agreement. Or we say, your policy is deficient, which we're not likely to do.

Woman: Thanks for that clarification. So Benedict Addis, Hadia Elminiawi, Marc Anderson and I think - and then I think we need to come back around because there's a strong proposal to have A, Purpose A, as defined back under the ICANN purposes. So for those of you who had some heartburn around that, we need to hear back from you if you - if that makes sense given the new insights that have been presented. So Benedict Addis, Hadia Elminiawi and (Mark).

Benedict Addis: It's an old hand but hurray for agreement. Thank you very much.

Woman: Are you saying the agreement is that ICANN is willing to say that they are the controller and that you establish - recommend the policy and then ICANN will establish the necessary joint data controller agreements or whatever is needed.

Okay. Wow, people are excited about that. Okay, Hadia Elminiawi go ahead. Thanks for waiting.

Hadia Elminiawi So actually I was going to say what (Daniel) just said, that Appendix C of the temp spec does identify ICANN as a controller. So in relation to the collection of registration data, ICANN role under Appendix C, it's a controller. With regard to the transfer of registration data, again ICANN role is a controller. With regard to the transfer of registration data from register operator to ASCO, again ICANN role is a controller. So it's stated everywhere.

And actually, this is the table, when we were talking about Appendix C, that we were arguing to retain. So when there were those arguments about like omitting or - Appendix C, we said we're fine with that but we need to have the table which has the processing activities and the roles.

Woman: Okay, thank you. (Mark)? And then I'm going to flag Thomas Rickert and (Jane), come back to you about would you support Purpose A under the ICANN purposes for the purposes of moving forward with this exercise for the next stage. Marc Anderson

Marc Anderson: Thanks. This is Marc Anderson. So great conversation about Appendix C. And, you know, I guess if we harken back to (Alan's) point, you know, when we got to the conversation about removing Appendix C, you know, it wasn't just a recommendation that we remove it completely.

Appendix C served a purpose - or serves a purpose today in the temporary specification. And that is really in a lot of ways to take the place of having a joint controller agreement, you know... And, you know, (Dan), feel free to correct me if I'm wrong here but, you know, there was - you know, because of the time constraints, there wasn't an opportunity to enter into joint controller agreements with all contracted parties by, you know, May - May 2018, right?

And so in a lot of ways that Appendix C serves the purpose of a joint controller agreement. And so that - you know, (Alan's) original recommendation to get rid of Appendix C was not a recommendation to remove it altogether. It needs to be replaced. And so the recommendation was to replace it with, you know, the joint - you know, a joint controller agreement. And part of (Alan's) recommendation was that - you know, that takes time.

And so (Alan's) recommendation was that we initiate the - you know, we as a working group initiate the process - or I guess we wouldn't initiate the process but encourage the contracted parties to initiate that process of negotiating the joint controller agreements now because that is going to take time to get to the end.

Woman: We are going to note that. And we have the parking lot of other agenda items that we have to figure out when and how you're going to manage those, so we'll put that in there so we don't lose that.

I'm going to Thomas Rickert. The question on the table is can, for the purposes of the next stage of our exercise, can we carry this Purpose A for ICANN to stay in with the ICANN purposes. Thomas Rickert.

Thomas Rickert: English is not my first language but I think you would call me party pooper with what I'm saying now. The topic of responsibility has been discussed three or four times in the lifetime of this EPDP. We never got a straight answer. We've asked EPDP leadership to reach out to ICANN or to confirm

that they will actually enter into a joint controller agreement with the contracted parties.

So I understand, Chris Disspain, that you don't foresee any difficulties with the board accepting that and making the org sign this. But I think we really have to be able to rely on that. And I guess a statement from ICANN.org, and I'm looking at (Dennis), where it would be most appreciated because I think what we can least afford to see is that we come up with our policy recommendations and ICANN refused to sign the contracts required. I'm not suggesting that you would, right, but I think that we should play this safe. Sorry for being that cautious, maybe overly cautious.

Woman: Okay. Thank you, Thomas Rickert. James Bladel, can I put you on the spot?

James Bladel: I don't really care anymore...

Woman: Okay.

James Bladel: ...about it. I mean - and that sound dismissive. I guess my point is if we want to include something that - and it's already included in two other places and ICANN has never engaged in this function or doesn't even have a process for this, okay. It's PR. It's window dressing. But we'll go with this.

Woman: Your flexibility. So I'm ready to move on. Okay, I've got four Marc Anderson and Alan Greenberg - oh no, (Mark's) done. So I've got Alan Greenberg. So Alan Greenberg, hot and burning needed because we're moving A to be there where you liked it. And it's to move forward with purpose. That's all we're saying.

Alan Greenberg: I'm not talking about A. I'm responding to Thomas Rickert. Chris Disspain has said he is the representative, we've been told, of the board. He said earlier today if he hears anything here which he thinks is going to be a real red flag with the board, he will let us know. I think we should take him at his word.

Woman: Okay. Thank you, all. So just recapping. A will stay in the ICANN purposes for the next stage of our discussion. Chris Disspain, you're on the hook for that statement.

So what we're going to do now is hear from the group that went out on the... Can you put that other language back up? Okay, so we're going to hear from the group that went out. And maybe we'll take like a ten-minute break if we can. And then from five until six we need to go through the example. I don't even know what time it is, 4:30

So you're going to go through this language. The goal is to have a brief break. And then from five to six we're going through the example of the data worksheet because then tomorrow, what we're going to do is take up the purposes and take them through the data worksheet. Okay?

So we do have somebody to speak from the group that went out, Margie Milam maybe or? Oh, (Kaitlin), great.

Marc Anderson: Okay. So this is Marc Anderson for the transcript. We broke out into a small group to talk about the language around accurate - was it, accurate data in the purpose statement.

And what we agreed on is that accurate data is not a reason for processing that data. I think we all agreed that having accurate data is desirable, we want accurate data. But you don't process data for it to be accurate. That's sort of circular logic. But - you know, so the first thing we agreed to is removing that, the accurate language from the purpose statement.

But to address some of the other - the concerns around accuracy, we agreed to two other things. The second thing we agreed to is that we would come back to the group and recommend language be added to our final report that nothing in our report is intended in any way to diminish or circumvent -- I

guess maybe we can wordsmith that language -- but in any way impact existing requirements, policy, contractual or otherwise, around accuracy of data.

And so I think this was an important point for a couple of reasons. First, it addressed the concerns that were being raised around accuracy but also because in effect, the small group that broke out is making the first policy recommendation.

And so that this is language we're recommending be in the final policy, that we have language in there that says nothing in our policy recommendations is intended to in any way impact existing requirements around accuracy of data. Okay? So I don't want that to slide past anybody. You know, we're recommending final policy language here.

Man: All right.

Marc Anderson: Yes.

Man: Go there.

Marc Anderson: We did. We went there.

Man: Yes.

Marc Anderson: And then the last thing we agreed to is - or we wanted - I guess, we want to note for everybody that there may be other aspects of accuracy that are - that need to be discussed by this group. So we wanted to make it clear that nothing in that sidebar conversation is in any way intended to be agreement that accuracy is completely solved. And so there may be - you know, there may be cases or, you know, we discussed a couple possibilities where we want to talk about accuracy more during our deliberations.

So we wanted to make it clear, we haven't solved accuracy altogether, taking it off the table. What we agreed to is that it's not a purpose for processing data and that nothing in our policy recommendations should in any way impact existing contractual and policy requirements. Did I - that fair?

Man: That was a good representation of the conversation out there, folks. That was good.

Marc Anderson: Okay. Super.

Man: So here it is, out on the table, actual policy language for your product. Any concerns, right, because we're in the home stretch here for day one? Any concerns? People who can't live with what that small group came up with?

Yes, over to him. With the microphone, please. Microphone.

Milton Mueller: L is supposed to be listed there as replacing and it's not. If we could just add that, that would be.

Man: Oh, wait. Let me just push that aside for one... I just want to put it over on this side for one second because before we got to that question of L, I want to see on the issue of accuracy how we're doing.

Milton Mueller: It's all right.

Man: Let me just put it on the side. Let's come back to that. But on the issue of accuracy and how they resolved the problem of accuracy, can anyone not live with that? Yes? I'm looking, I'm looking. Okay. So accuracy, good. So we did that note.

So Milton Mueller just put another thing on the table, which is why are we not mentioning (unintelligible) in L.

Milton Mueller: I didn't put it on the table. It was already in there. It just wasn't - when they made a slide, they didn't put it in.

Man: Great. Okay. So exactly. The way that it had been posed up there was that L was part of this, taken off, correct.

Benedict Addis: Didn't we say earlier that L was kind of just like a conglomeration of H, I, J and K?

Man: So take a look at it, folks. Read it right now. Does anybody have a concern with taking that off the table? Yes, okay. So let me start with Lindsay then I'll go to Benedict Addis. And L.

Woman: Okay.

Man: Lindsay.

Lindsay Hamilton-Reid: Sorry. Lindsay Hamilton-Reid. Sorry, mine's not in reference to L.

Man: Oh.

Lindsay Hamilton-Reid: Mine's in reference to the whole thing, to be honest. I'd really like to clarify what it means by facilitate. Are we just going to leave it like that because that's actually - what is that going to mean? Is that going to be onerous on the contractual parties? What exactly will that mean? And, yes, I'm fine, we can park that but I would like to record that as a concern...

Man: Yes.

Lindsay Hamilton-Reid: ...about exactly how that's going to affect us. Thank you.

Man: Awesome. And let's bring that in. When we take this, we're working in the matrix, let's remember that Lindsay is saying, hey, facilitate, what does that

actually mean, okay? So let's have that conversation. Let's not lose that. But if you're okay with that, Lindsay, putting that into when we do the matrix.
Great.

Okay, Benedict Addis, you're up first.

Benedict Addis: Sorry. I've been told off for saying too much about being a former law enforcement officer, sorry about that. A bore in a pub is what I think I am.

So just from a purely logical point, L cannot be in here and because it's - because the access of law enforcement to process personal data is carried out typically under Article 6(1)(e), which is a public interest lawful basis. And it's a - and sometimes under 6(1)(d), which is the vital interest, C being...

Man: Hang on. We need mics, guys. We need mics. We need one person talking in a mic. Wait, I want to be clear what you're saying, Benedict Addis. Are you saying that we can't eliminate L, we need L in this document? We can't get rid of it?

Benedict Addis: Correct.

Man: Okay. And you're saying it because of the rationale...

Benedict Addis: It relies on a different legal basis to all of these other ones.

Man: Got it.

Benedict Addis: ...which is 6(1)(f).

Man: So (Benedict's) point is there's a different legal basis when we're talking about law enforcement. Therefore, we can't just pull out L. Let's think about that for a second. I know that Ashley Heineman had her hand - is it about this

part? Yes? Go for it Ashley Heineman. Come on, let's go for it. Then we'll swing around.

Ashley Heineman: Well, I was going to agree with Benedict Addis in that I think the issue is here is that there's different lawful bases for which law enforcement. But again, it's a bit tricky here because we're not talking about legitimate interests of third parties. We're talking about the legitimate interests of ICANN - not - but the purpose of ICANN. So anyway - I totally contradicted myself.

But anyway, what I was going to say is that... And I'm going to channel (Giorgios) here. I'm sorry, I stole your thunder. But his point, it's not so much that we want to maintain it specifically for law enforcement but for it to be a purpose, it needs to have a certain level of specificity. I'm not sure that without, you know, a reference to things like DNS abuse, etcetera that that specificity is not here. I'm not saying that we need to identify all legitimate interests of third parties because like I said many times, I don't think this is the place. But there does need to be a little more specificity in this item.

Man: Okay. And Ashley Heineman, just to be clear, though. Remember out - what we're asking folks is if we can take this and go into the next phase of analysis. And are you comfortable enough taking this going into the next phase of analysis? Okay, great.

I'm just going to swing around real quick. I'll start with Collin and then come right around here like this.

Collin Kurre: Collin Kurre for the record. So what I don't understand is that - is why we would keep L. L to me seems to me like a Frankenstein of all of the other elements that we've decided to forfeit in lieu of this new wording that we've agreed upon.

It seems to me like access of law enforcement would be encompassed by lawful access, as it says here in this new purpose that we've defined. And the

parts, like the bits of L, like enable the prevention of unlawful conduct and including consumer trust, you know, we've already got DNS covered to eight, which we agreed on, on preserving.

So I just don't really see any benefit. L is bizarre. Why do we need it? I'm not convinced.

Man: Just to be clear, the reason that Benedict Addis put in there was it has law enforcement - the law enforcement component of L would require a different legal basis.

Collin Kurre: But could we not - at the beginning of this discussion, we were talking about justifying single purposes with multiple legal bases. Why couldn't we just use the law enforcement bases to dual justify this new purpose that we've suggested? Doesn't that make it stronger?

Man: Let's put it on the table like that. And let's come around and see what people say. And that's four hands that have gone up since I've come around. I'm going to have to - sorry about that. Let me go here and then I'll go back. Alan Greenberg?

Alan Greenberg: Yes, I think several of the items under 6(1) apply here, law enforcement, legal - legal reasons is another one. The vital interest of another natural person could well fall into this. So as long as we're going to come back and look at those individual needs as opposed to the purposes, I'm happy with the consolidated purpose.

But, you know, I guess I'm serving notice that we have to go back and look at those and be more specific at some point in our document before we finish this game.

Woman: (Unintelligible).

Man: Yes.

Alan Greenberg: But we can't exclude them here and not put them in somewhere else later on.
Thank you.

Man: Just to note, I have all these folks, all of you who - noted down. And I hear in my ear as well that Benedict Addis has some proposed language. So if you want to hear his proposed language before you speak let me know.

Thomas Rickert: Let's remember we came up with this language as a placeholder for all those third party requests. And we have not limited to the - limited this to one legal basis only. So even if we stripped out L, we would still have different legal basis because some of the disclosure, I know you reappear and your ask will likely fall under 6(1)(b), we'll have 6(1)(c) disclosure. We will set - have 6(1)(f) disclosure. And so I think it doesn't do any harm putting L in here because it will encompass all of Whois customers, including law enforcement.

Man: Okay. I have Milton Mueller and then others coming in. Do people want to hear what the proposed language is or Milton Mueller, do you want to make a comment first?

Milton Mueller: I do not want to hear it. I want to remind Benedict Addis and everybody else that if you shoot this down or you try to add L, the compromise is off, we're going back to debating B(1), B(2), H, I, J, K and L. And we will be spending the next two days doing that. So that is a legitimate argument.

We are trying to make a compromise here that assuaged different concerns of different people. The key point here is that we accepted this as an ICANN purpose not as a third party legitimate interest. And if you throw that out, you're throwing out a lot and you're going to spend a lot of time cleaning up the mess.

Man: All right. Let's keep rolling here and see if there's a way to circle forward on this. (Larson), I - would you like to hear from Benedict Addis first? Okay, great. Benedict Addis, play in there.

Benedict Addis: Okay. So I was actually going to go back just to the very simple statement separate to this proposed text that says supporting a framework to address appropriate law enforcement needs, perhaps including language around court of competent jurisdiction, which we've used elsewhere to keep out bad requests so just basically going back to the language we saw in the original temp spec.

The reason I say that is because law enforcement is a big different. And we might - when we come to looking at the data elements, we may find that for example it's - it requires different language.

We need to for example make sure that law enforcement gets very antsy around things like disclosure and they're allowed to for example, seal a court order to say thou shall not disclose the data subject. And that's a lawful act. We probably don't want to hand that right to others, third parties. So we might want to separate this language simply for that purpose. We probably want...

And I acknowledge what you say, Thomas Rickert, we can rely on different lawful bases. But I think I remember you saying quite early this morning that we probably should separate them. And these are very clear, different lawful bases, different to almost everything else.

It just strikes me that if we want to give ourselves flexibility later on and particularly the flexibility to keep out bad respects -- remember, I keep saying this, I was a cop, we're sneaky, right -- make sure we can defend and more importantly, give the contracted parties the tools they need to defend against bad requests and pushback, having their separate - having this in separate language because remember, law enforcement have due process behind them.

You're not facilitating something here. They can get this data anyway. What you're doing is preventing, pushing back. With that, it's a negative framework as opposed to a positive one, and that's why it differs.

Man: Farzaneh and then thinking that I'll come back here.

Farzaneh Badii: Farzaneh Badii, NCSG. So the problem - there are fundamental problems with this paragraph, which I don't think we can resolve without going through the matrix first. And the problem is that you don't have only law enforcement but you have public authorities and then you have promoting consumer trust in the GNS and Internet, which is like a totally broader mission for ICANN. I don't think it should - the Internet should be there.

So this paragraph, I believe the language is too broad and a lot of things are off about it. But of course, there is like - so we need to wordsmith. And the only way to do that I believe is to go through the exercise of the matrix and the actors and then come up with a language that is acceptable.

Man: Okay, great. And Stephanie?

Stephanie Perrin: Stephanie Perrin. I mean, basically we have to throw out L because the language is way too broad. It's just that simple. It's already captured in the other compromise language.

David Plumb: Got it. Okay.

Stephanie Perrin: It - and in terms of Benedict's concerns about law enforcement they are a legitimate third party. I don't see that we need to split them out.

David Plumb: Okay great.

Stephanie Perrin: They're special but they're still captured in that.

David Plumb: Okay. Lindsay and then let's see where we stand here folks.

((Crosstalk))

David Plumb: Thank you.

Lindsay Hamilton-Reid: Lindsay Hamilton-Reid. Yes I was – sorry I was just talking to Benedict there about the fact that even including law enforcement full stop - because if they provide a court order, which see anything, I will accept to release data.

I'm not going to refuse a court order within jurisdiction so it's – law enforcement have got their own ways of getting data that other parties maybe don't, so I've been wondering why we're even having to include this within it. I don't really...

David Plumb: So - but your bottom line then would be get rid of S – L, right? Get rid of L and just let's go through the matrix and see what happens when we talk about working through legitimate third...

Lindsay Hamilton-Reid: Yes absolutely purely because they have ways of enforcing and to me...

David Plumb: Okay.

Lindsay Hamilton-Reid: ...isn't just down to this that law enforcement can ask for data.

David Plumb: So Benedict would you be okay - do the exercise of the matrix assuming that L gets tucked out? And in the exercise of the matrix when we look at legitimate third-party interests play around with what that might look like in terms of data requests, how that works, all the questions in the matrix so we test it out there?

Does that seem like a legitimate way forward of – that work? Useful way forward?

Benedict Addis: As long as I don't get in the back that I shouldn't be speaking for cops that – that's the – I need to be careful with my – with the GAC folks that I'm, you know, that they're making sure that the PSWG are represented because I haven't been in law enforcement for four years.

David Plumb: Okay.

Benedict Addis: Okay. So yes qualify it.

David Plumb: Okay.

Benedict Addis: Thank you.

David Plumb: So let me just double-check here folks but in the interest of time in the afternoon is it okay if for - provisionally erase L? We assume it's part of this new compromise purpose and when we go through the matrix think about the implications of law enforcement and other types of legitimate third-parties.

Could anybody not live with that? That going to work? Okay well can I get people to turn down their things if we're moving on from that, or do people absolutely need to say something about that that you (unintelligible)?

Okay. We really – I recommend that we move on and so we could say, "Let's go and do this matrix exercise stuff." All right, Milton you okay? Yes. You don't need to say anything else?

Okay I'm just looking at your thing that's up and vertical. Okay. Okay. Okay great. So that's that and let's just be conscious about that going forward and Benedict's point.

There is – there are different legal basis probably when it comes to law enforcement. Okay Gina Bartlett what you working on back there?

Gina Bartlett: So what we're working on is that we just want to mention on M that the person who brought up Purpose Number M as in Mary or man – it's the only issue – what - the legal basis should change.

Isn't that what you said Marika? So can you just elaborate or ask the person who brought that up? Margie. Great.

Margie Milam: Yes that's the one that's the performance contract one since the registration agreements with the registrant has the obligation to engage in the dispute resolution mechanisms so that's the only change.

David Plumb: Okay so instead of being the 6.1 F, 6.1 B, Performance of Contract, right? Okay. Does that seem like – knowing that we may play around with that a little bit but - people okay just making that assumption going forward and then we'll test it if that works out when we do the matrix on that?

((Crosstalk))

Milton Mueller: I think it's both not instead of.

David Plumb: Okay so both. All right. So we could put both and, you know, knowing that we had this cautionary tale from folks before. Like be careful if you're trying to justify the regulatory authority when you put out two. Why don't you pick one and – but it could be both and we'll test that.

Gina Bartlett: For M we're going to have both purposes...

((Crosstalk))

Gina Bartlett: Okay.

((Crosstalk))

David Plumb: ...resolution piece.

Gina Bartlett: David Plumb?

((Crosstalk))

David Plumb: ...contract.

Gina Bartlett: Sorry to interrupt. We have one more from Marika.

Marika Konings: Yes this is Marika. I just wanted to mention that Kristina earlier today put in a new additional proposed purpose that we've added, so we've updated the list and we will circulate it at the end of today so people can look at it.

But I just wanted to put it on people's radar screen. That is a new N so an additional one that would read, "Enabling validation of registrant name holder satisfaction between brackets fulfillment of registration policy eligibility criteria, which would be a purpose for ICANN as well as pursued by a registry." But Kristina...

((Crosstalk))

David Plumb: ...add-on language on the screen.

Marika Konings: Yes.

David Plumb: Before you do I just heard some noise in my ear over here on the other thing – talked about that M. Is it okay if we just move forward and test out which of

those two legal purposes make most sense to go in the matrix? It's just wrong.

Benedict Addis: So ICANN's – these contracts don't have the registrant. The data subject's not a party to those contracts.

David Plumb: Yes.

Benedict Addis: So you can't rely on 6.1 B. Sorry.

Gina Bartlett: It's - the registration agreement with the registrant has the commitment to participate in the dispute resolution processes, so I'm not talking about the ICANN contracts.

I'm talking about the contract between the registrant and the registrar. That has the obligation to participate in the dispute resolution mechanisms and that's a flow-through from the contracts. That's – the – there aren't a lot of those but that's one.

Benedict Addis: So you're talking about the contractual inheritance where ICANN is mandated in the RAA that the term be put in the registration agreement.

Gina Bartlett: Right.

Benedict Addis: And that – thus you say it's...

Margie Milam: Yes.

((Crosstalk))

Gina Bartlett: And it's the only way...

Benedict Addis: Okay.

Gina Bartlett: ...you could actually enforce it. If – and it has to be in the registration agreement in that case.

Benedict Addis: Okay.

Gina Bartlett: So that's why it's a different scenario.

Benedict Addis: Thank you. I understand. Sorry.

David Plumb: Okay great. So let's – Marika's going to put up this new one. So the reason we're sort of banging through these is the last thing we're going to do today is we're going to walk through an example of how to use that matrix and then that's going to be our work tomorrow, okay?

So we're just banging through these concerns you had. Yes? Okay. All right, rolling stones. Here we go. So this is a Purpose N and sorry who wrote this?

Okay great. Kristina why don't you just say why this was important to write and what you're trying to achieve by writing it?

Kristina Rosette: Sure. I thought it was important to write here because it's not really covered by any of the other purposes, and the scenario that we're talking about here is where the registry operator has adopted whether pursuant to the terms of Specification 13 - because it – that's the – it wants that brand status so it's willing to restrict who's eligible to register names in its TLDs because it may have entered into some kind of voluntary public interest commitment that would require that kind of restriction, or for purposes of its own business model that it has adopted in its registration policy eligibility criteria that registered name holders must meet in order to obtain – to register a domain name in that TLD and that obviously we're going to have those criteria.

They're meaningless unless you can actually validate the eligibility and that's really, I mean, it's a very narrow purpose but it's not really covered by anything else that we've talked about so far.

David Plumb: Okay. There we go. Let's run through the questions. I got James. I got Benedict. I've got Milton. Stephanie is that from now – right now? No. Okay and Farza? Okay.

James: So...

Kristina Rosette: Farza.

David Plumb: Farza yes.

James Bladel: ...go – quick question. I agree that this is a purpose that's missing. Is it ICANN Purpose N or is it Registry Purpose I? I just – I feel like – is it – I'm just trying to place it. I think it's – we need to capture it. I just don't know where.

David Plumb: (Unintelligible).

James Bladel: No it's – it isn't. Well it could be but it – as Kristina mentioned it could be a voluntary pick. It could be a criteria-based TLD. It could be Spec 13, which is again elected by the TLDs so I guess I'm just struggling with where it goes. I agree with you that we need to get it in here.

Kristina Rosette: I don't have a – well I think it – I don't have a really, really strong view on that. I think it – to me it's more important that it be covered as a registry operator purpose.

I think there is definitely the room to argue that it's an ICANN purpose so I'm kind of neutral on this and I think, you know, that my Registry Stakeholder Group colleagues are also (unintelligible) if you're not.

But, you know, if folks have to – have specific views on this, you know, certainly we could talk about where the best place is to put it.

James Bladel: So then one other follow-up question is is it - the registry purpose seems to be that the registrar should collect it and transmit it to the registry for verification of the criteria – the eligibility criteria so then...

((Crosstalk))

Kristina Rosette: No necessarily. Not necessarily. That could be one way in which it happens or it could be that the registry operator is doing it itself directly.

James Bladel: Okay so should we capture it as a registrar purpose as well?

Kristina Rosette: I'm totally open to that and I meant to put that in the chat that I wasn't excluding it as a registrar purpose but, you know, obviously I'm here as a Registry Stakeholder Group representative.

David Plumb: Great. Okay. I've got Benedict, Milton, Farzaneh. Want to jump in on that? Okay great. So Milton.

Milton Mueller: So similar concerns to what James was discussing that this is okay as a registry or a registrar purpose but definitely not an ICANN purpose. We're concerned that that would invalidate ICANN collecting data let's say on the profession, or let's say you want to have a Dot MD so you have to decide whether you're a doctor and something like that.

We see no reason why ICANN needs to be involved in that even for compliance so if the registrars collected that data and the registry has collected that data, then if ICANN is concerned about compliance they can ask for that data from the registry or registrar but they don't need to see it as

a collection purpose of their own. So I think – I hope we cannot put that in the ICANN column.

David Plumb: Okay great. Farzaneh.

Farzaneh Badii: Farza Badii, NCSG. I just wanted to clarify something. Enabling validation of registered name holder fulfillment of registration policy by using WHOIS data element – but – so if it's not...

((Crosstalk))

Kristina Rosette: Not necessarily. It could be additional data elements that may or may not be included in WHOIS. There are a couple of registry operators that have amended their registry agreements such that the registered name holder satisfaction of the registration policy eligibility criteria...

Farzaneh Badii: Yes.

Kristina Rosette: ...are in fact a field in WHOIS.

Farzaneh Badii: So...

((Crosstalk))

Kristina Rosette: So the short answer is sometimes but not always.

Farzaneh Badii: Okay so some registries in their WHOIS data element collect additional data. Okay thank you. I think that should be definitely registry's purpose and not ICANN.

David Plumb: Great. Thomas then Alan.

Thomas Rickert: Maybe that's a good candidate for parking a final answer because I think that we need to learn more about how this is going to work. I think the beauty of making it the – an ICANN purpose as well as a registry purpose is that if there are PIC specs involved for example ICANN wants to enforce that PIC, and therefore the data needs to travel from the registrar to the registry level.

So far I see this travel only taking place on the basis of legitimate interests, while if we make it part of the overall package, i.e., the contractual requirements then it could travel as a 6.1 B and that would make the whole architecture/the whole travel of data more robust.

But I'm happy to, you know, I, you know, let's not finally decided on this. Also the registrars – James you mentioned whether the registrars want to have that as their own purpose.

I think if and when such validation takes place the registrars will conduct the validation on behalf of the registry and not just for themselves so...

Kristina Rosette: Right. But part of the reason that we wanted to make sure that A was included and B was also a registry purpose is that there are some registry operators that currently validate at the registry level, although there are many and in fact most where it's handled at the registrar level.

Thomas Rickert: But the registrars are doing it for the registry to check registry requirements. That's my point.

David Plumb: Oh wait. Okay. Okay guys we got a few more people on the list here that – who deal with this and then we're going to see where we are. Alan you're up next.

Alan Greenberg: To a large extent we – we've covered it but the it is definitely both a registrar and a registry requirement depending on the specific terms. I am concerned

with compliance because if it is in a PIC or in a – the specification for community TLDs it's in ICANN's contract.

Compliance may be in a position where they have to enforce it so I'm not 100% sure that we can leave ICANN out of it and I agree with Kristina. There are cases where it is WHOIS data.

New York City has a Nexus field in the – in WHOIS which is real data in WHOIS. Thank you.

David Plumb: Okay Hadia Elminiawi you're up.

Hadia Elminiawi Hadia Elminiawi, ALAC. So I totally agree it's a registrar and a registry purpose but also I do think that it is an ICANN purpose as well, and it is part of the contactual (sic) compliance investigation and contractual enforcement. So – and I also agree with what Thomas - or support what Thomas mentioned.

David Plumb: Great. Okay so Milton, you know, Milton you've been the strongest voice here saying, "This is absolutely not an ICANN purpose," right. And others have been saying, "You know what?

This is making sense to me to have it listed as an ICANN purpose." Bring us back one more time. Think – help us understand what's concerning to you about this.

Milton Mueller: Well I still haven't heard any reason why for compliance purposes that ICANN needs to consider this part of its purpose. It could simply, you know, get the data from the registrar or whoever collects it.

It's definitely – the purpose of the data is the registry or the registrar. It's not ICANN so I think that's obvious so just saying it might be useful for ICANN to have that data.

And I have a more fundamental concern about PICs, which is when we were modifying ICANN's mission statement there was a big debate about the content regulation in ICANN.

And in effect ICANN agreed that many of the PICs that it was imposing on registries were forms of content regulation that would not be allowed under the new bylaws but they grandfathered existing PICs.

So I think are we talking about new PICs or are we talking about grandfathered PICs? And if we're talking about grandfathered PICs again I think we've done perfectly well with those PICs without WHOIS purpose being, you know, without ICANN having this data so why do we need to worry about it now?

David Plumb: Kind of at the end of the road here. I know that we haven't reached agreement on this but feel like - kind of take a break on this and to say I hear really broad agreement.

This is the appropriate purpose to put in for registries and registrars. Nobody's questioning - where we're kind of in this zone of bait is is it also an ICANN purpose and what are the - let's hit the pause button on that particular thing and know that we can go in, check that later and it may not even prevent us from going - doing the work and - let's take - ten-minute break.

And I know there is actually no such break and so let's - we'll take - we'll call it a five-minute break and hopefully it's a ten-minute. All right. But here's the reason to make it short because we're going to stop by 6:00, right.

So if we take this epic break it gets very hard - do this final piece, which is to show this example of using matrix and then that gets us in the groove for tomorrow to really dive in in second layer of this.

Gina Bartlett: Can we – yes.

David Plumb: Very quick Thomas. We're breaking.

Benedict Addis: Thomas and I discussed a research purpose. A lot of us have relied on data from these WHOIS accuracy studies commissioned by ICANN but we don't have that listed.

It's very different to contactability and identification and so on and so forth. Thomas it's a – it would be a – it would be an O so it's a thing to talk about in the break.

GDPR does make exemptions and exceptions for research with appropriate safeguards so would that – if that's okay - if we could...

David Plumb: Absolutely.

Benedict Addis: ...button homey over the break...

David Plumb: Yes.

Benedict Addis: ...to talk about that. I'm not using this as a back door to get anything in. We've – we probably safeguarded it but...

((Crosstalk))

James Bladel: Let's talk about it. I'm very concerned about that.

David Plumb: Great. So folks if you like that topic for whatever reasons, because you're scared of it or you like it, yes Tom's having - chat over your break, right. So if it really is a five-minute break which is very difficult - but let's call it ten. We're back here at 20 past guys although I don't see the clock.

Gina Bartlett: And I think when we come back at 20 past we're going to really go to the data example worksheet. We're not going to come back to the purposes again, okay.

And then we'll - at the end of the day we will allow five minutes to kind of regroup or maybe ten on how the agenda's worked for you and our plot for tomorrow, okay.

David Plumb: Absolutely. And I just want to say wow we did a ton of work on purposes just now, right. We did a ton of work over the last couple of hours and if you look at where we started the day and where we are now in terms of what we have for purposes to do a second level analysis, we're in a very different - so congratulations guys.

That was big. Hey great. We'll come back and we'll see what that second level analysis look like.

Gina Bartlett: Good job.

((Crosstalk))

David Plumb: I think that the group felt like they needed to do that.

James Bladel: Yes.

Kristina Rosette: Yes.

David Plumb: And then I hope...

((Crosstalk))

James Bladel: Yes.

David Plumb: The progress we've made...

((Crosstalk))

David Plumb: I'm really sorry but that was my...

((Crosstalk))

David Plumb: I know and that's why I said we're going to roll with it. Whatever.

((Crosstalk))

David Plumb: That's how your eyes were set.

Kristina Rosette: I know. Even the AG is very poker-faced. I think one thing we have to...

((Crosstalk))

Kristina Rosette: I think we're really going to, you know, get examples...

((Crosstalk))

Kristina Rosette: ...we might have to regroup on how we manage all of that so we'll go do that first.

((Crosstalk))

Kristina Rosette: Okay I'm going to check in with James.

((Crosstalk))

Kristina Rosette: Okay. We have three minutes. Three minutes.

((Crosstalk))

Kristina Rosette: Could everyone please grab a seat so we can get started? Can everyone please grab a seat so we could get started? Everyone please grab a seat so we can get started. Okay.

((Crosstalk))

Kristina Rosette: Okay. Stop having fun over there. All right, so what's going to take us to the plan for tomorrow is Caitlin has taken the data element worksheet. You have that in front of you somewhere from early this morning and she is going to walk us through the Purpose E and walk us through the data elements.

This is a process exercise. We want to understand how we can take a purpose and walk it through the data elements worksheet, all right? So we're not going to go to challenging or questioning the content and the substance. We're using this so that we get a rhythm and a method to take the purpose and walk it through a worksheet. Okay?

All right. So I'm going to pass it to (Kaitlin).

(Kaitlin): Thanks, Gina Bartlett. And for the benefit of those that just walked in the room and as a reminder, last Friday I distributed a series of worksheets that Thomas Rickert and Farzaneh had worked on. Sorry, let me get this a little closer. And we thought those worksheets were very helpful but they were very overwhelming when we first opened them. So we wanted to consolidate them down to a one pager, which ended up being a two pager because, as you know, there are a lot of data elements.

And so what we want to do for each of the purposes that we identified in the previous exercise is to take it through this matrix. So, as Gina Bartlett said,

we're using purpose E as an example and purpose E is the business or technical failure purpose, which is formally 4.4.11 and currently purpose E.

So the first step is to identify the lawfulness of processing. And again, as Gina Bartlett said, none of the answers that are filled out are populated or authoritative. The group will deliberate on all of these, but these are just examples. So we populated 6.1b for lawfulness of processing under E, the business or technical failure, and that's the purpose of necessary for performance of a contract.

When you look at the left-hand column, you'll see all of the data elements that are currently collected for that purpose. And this is specifically registrar data escrow. That's what's filled out. So when you see a 1 next to a data element, that's what's currently required in the registrar data escrow specification to be collected.

So from there we go to the series of questions and the first is, is the purpose in violation with ICANN's bylaws, so is providing mechanisms for safeguarding registered name holders' data in the event of business or technical failure in violation with ICANN's bylaws? For that we said no and we provided the language that supports that, and we would have to do that for every purpose.

The second is if the purpose is based on an ICANN contract, is this lawful as tested against GDPR and other laws? And for this purpose we said yes, as escrowing the data is supported by ICANN's mandate to provide for security and stability and it's also primary to protect registrants' rights.

The third question to be answered is this data is required for the purpose of whom? And here we said it's an ICANN purpose, as we identified in the previous exercise and also a registrar purpose. And then question four is, is the processing a legitimate interest and necessary to achieve the purpose?

So we would go through an analysis as a group to see if it is indeed a legitimate interest.

And here as an example we said yes, it is a legitimate interest as ICANN has a role in ensuring that in the event for example a registrar fails or is terminated that those domain names are safely transferred or those registrants are protected and their names are moved to another registrar.

So question five is do the data elements require transfer to meet this purpose? And so here in this example we said, the data will be transferred to the data escrow provider. And additionally, in the event there is a registrar failure that registration data would be transferred to the gaining registrar that was approved to take the name.

And then the next question we would ask would be is publication of the data by the registrar or registry required to meet the purpose? In this case no, the data is not made public for escrow purposes. However in the event there is a registrar failure, that data would be transferred again to the approved gaining registrar.

And then another question that Thomas Rickert and Farzaneh had added was what are the data retention requirements to meet the purpose? And for this particular registrar example, the registrar accreditation agreement requires two years for the general retention provisions. And I would note that that number may be different if a registrar for example applied for a data protection waiver, but under the agreement it is two years.

And then there's kind of a catch-all question was is there additional information needed to adequately document the purpose? And so for this example we said no there's not. So that is kind of a high level overview of the questions that we would go through for each purpose, and of course the group would then deliberate on the data elements. But I think I might pass the

mic if Thomas Rickert or Farzaneh wanted to qualify anything that I said since this was really their product.

Thomas Rickert: Yes thanks very much. And first of all I think the - you guys did an excellent job in making this big, big matrix easier to handle so thanks for that.

(Kaitlin): That goes to Berry that comment.

Thomas Rickert: I think what we need to be ready for - to do is actually do this for every legal basis, so every of the process purposes we will from 6.1b to 6.1f to 6.1a if need be and I think that not all of the questions are obvious for all the processing activities, but we wanted to keep the format as uniform for other purposes as possible.

And as you mentioned, (Kaitlin), this is populated just to give an example so before you ask whether, you know, admin data actually needs to be collected for the purpose of escrow, you know, it's marked yes here but I think that's something that needs to be discussed.

(Kaitlin): Berry?

Berry Cobb: Berry Cobb. Just to add a couple of points to this. First and foremost there had been a few changes to this version that you're looking in front of you in terms - especially in terms of the responses. As (Kaitlin) and Thomas Rickert mentioned, the answers there are very much draft. So as an example, I'll point out that under the retention question that has been updated. Technically the registrar escrow agreement is that those deposits are one year. I had originally put two years down because that's the overall retention of data from a different provision than the RAA, so that's changed. Again don't die on the sword over what is listed here now.

Also, as (Kaitlin) mentioned, you know, the fields that are marked as one are what is currently listed in the specification or the escrow technical

specification and so those are up for deliberation. And there was one other change which goes back to the legal basis.

The templates that you'll see tomorrow whenever we get to them actually will list all three, B, F, and A. This one just for now for illustration purposes lists B but as each group or this entire group goes through them, that test should be applied and then we can basically extract which one when we mature the document. Thank you.

(Kaitlin): Oh, Ashley Heineman?

Ashley Heineman: First thanks for that clarification, Berry. Let's just ignore you said some of that just for the sake of running through an example to make sure I understand the purpose of the template and my brain is still working for the day. It has to do with like if you assume that the only lawfulness of processing is Article 6.1b, then is it appropriate to be asking in this case is the processing a legitimate interest since legitimate interest is in and of itself its own lawful basis?

I'm just trying to understand kind of how this template - I don't even know if there's any examples that won't have legitimate interest as a lawful basis but just trying to understand how this is all going to shake out.

Berry Cobb: I'll actually defer to Thomas Rickert. Again in the templates you'll see tomorrow, it'll have all three and the group should discuss through all three and whether one just applies or maybe two I think maybe as was mentioned earlier by Alan that, you know, we hope to get to one or where we can get to one. So that's really just an option.

Ashley Heineman: But the question has to do with question number four, which specifically says is there a legitimate interest in the processing? But if you have a lawful basis, that doesn't - isn't based on legitimate interest, do you need to ask the

question as to whether or not there's a legitimate interest in the process?

Sorry.

Thomas Rickert: Yes. I think that this is the product of conflating or combining two questions. I would need to compare it to the previous version. I think Farzaneh and I we had in there just a question whether processing the data is necessary to achieve the purpose, so I think that's the primary goal to check that, but let me double check before we reconvene tomorrow.

But this is basically a set of questions and responses that I think concerns that Milton also had so that we can always check again back in the bylaws and we can check the ICANN requirements for the legality and that we check some of the principles that we have in Article 5 of the GDPR. So we might need to be flexible depending on the individual case but the idea is actually to go through all the legal bases for all purposes using this format.

(Kaitlin): And I think one thing that we're looking to get out of providing this example is if anyone thinks there's anything missing from this example or possibly anything superfluous that doesn't need to be included. But I think there was a queue. James?

James Bladel: I just have a question. Thank you for this, (Kaitlin) and Thomas Rickert. What would be an example of additional information that would need to be captured in number eight? Because for example in this one in data escrow is it relevant that the data is encrypted and cannot be decrypted either during transmission or until a qualifying event occurs? Is that - does that - appropriate for that - I don't know what - I really don't know what would go here.

Thomas Rickert: So again I guess this is - this language has been refined but the original idea is whether additional data elements or additional information needs to be collected or processed to achieve the purpose. So that would basically be what (Christina) has now proposed to be purpose N. You know? So if we had a registry purpose that would not fall under the other purposes then, you

know, a registry might want to collect additional data elements such as the number that a lawyer has with a local bar association or what have you.

But you're right, I mean you can, and I think we will need to have that discussion and that's specifically when we discuss whether the purpose is sufficiently narrow and whether we are following the principles of data minimization and having the least impact for the data subject that we might want to add that. For certain process activities the data needs to be encrypted or that it needs to be (unintelligible). That's where possible in the framework.

Alan Greenberg: Yes. A couple of questions. Two of them, three and five seem to be answered as if there are only thick registries and - sorry, only thin registries that the information does not need - is not needed by the registry nor is it transferred to the registry and yet for thick registries they are. So I'm not quite - I want to make sure I understand what your - what the questions are you're answering because those answers don't seem to be right.

(Kaitlin): Thanks, Alan. As noted, these answers haven't been vetted by the whole group. They were just filled in for the purpose of the example. It's not authoritative and we will be discussing them also.

Alan Greenberg: Okay. And the second - the other one is, again maybe it's just because it's not authoritative, but on 6 it says - the question is does the information need - does publication of the data by registry or registrar required for the purpose, and it says no. No data needs to be made public for escrow purposes. So. Okay. Sorry. I parsed that statement differently. You're saying because it's only used for escrow purposes, it does not need to be made public. Okay? Sorry. I was reading it as a no, comma. Thank you.

(Kaitlin): That's okay. We can work on the grammar to make it more suitable. Milton I think - is Milton...? Okay. Farzi, did you...?

Woman: Two things. I think this is a really, really helpful way to look at these. A suggestion and a request. Well actually two suggestions. Suggestion number one, I don't know that - there may have been discussion about this at the leadership level. I think it would be extraordinarily useful once these are completed and we've reached agreement as to what each one of them says, that we intend to make them available either as part of the initial report, as a supplement to the initial report, whatever. I think it's going to make it a lot easier for people to understand how do we get from A to Z.

Second, it would seem to me that we would want to flip questions one and two because quite frankly if it's not lawful as tested against GDPR, I'm not sure it matters if the purpose aligns with the file.

Man: In terms of what I think is coming back to the leadership team right now, I heard two changes. One is to make sure we're clear on the question four. It's probably not about legitimate interests, it's about necessity, if Thomas Rickert said that, right? Question four needs to be talked about is it necessary, and flip one and two. Yes?

(Alan Woods): (Alan Woods). Just another one that we probably would have to raise, and referring specifically to the charter, and that is whether or not the consideration is within the picket fence or not. So it's in specifically the charter is one of the questions we should ask about each element so maybe we should make reference to that as well.

Man: Okay. You had a question on that? (Unintelligible) here. But Stephanie?

Stephanie Perrin: Stephanie Perrin for the record. With respect to the famous picket fence, this particular data processing activity is for the benefit of the registrant. It is for the continuity of the registrants' rights in their domain name. So I would argue rather strongly that it is within the mandate of this policy-setting exercise, forget the picket fence, you know.

Man: Was I misunderstanding here? I think the suggestion was that we should add that as a question, not specific to this purpose that's on this example sheet but in general your recommendation was, Alan Greenberg, that it should be a question on the sheet that we would ask for all purposes. Was that your question? Okay.

Stephanie Perrin: Sorry, I misunderstood.

Man: Okay. Great. Anything else we need to do? Again, what we're doing is right now is giving the leadership team instruction about how to alter this sheet in many ways. When we dive into tomorrow morning, we are going guns blazing in.

Alan Greenberg: No, I was just going to make the comment if it's not subject to the picket fence, it's not subject to a PDP so we have a big problem in that case.

Man: Having little knowledge about what picket fence actually means, whatever you guys want to say. Okay. I think I would encourage us to move on and then if, leadership team, if you think it's important to add that question in we can do a quick double check, is it in our mandate. Okay. Anything else on this? Anything to the sheet before we (unintelligible) tomorrow morning? Gina Bartlett?

Gina Bartlett: I'm going to close out. So we're going to recap where we are on our purposes just to make sure we're on the same page and then we are going to get some logistics from Terri and then we're just going to talk briefly about tomorrow, okay, and then we're going to break. How we felt about today and tomorrow, yes.

So where we are on the purposes, we focused in on the ICANN purposes. For right now we're keeping A and we've changed the language from reflect to establish, and we recognize and have a parking lot that Appendix B or the

joint policy - joint controller agreement may need to be revisited. We're not tackling that now but we noted that that is something that's there.

We have C and B we have the combined language that's proposed there. We have slots B1, B2, H, I, J, K, L and G. We've noticed that under that language that we need to clarify and make sure we explain the term facilitate and we also need to make sure that when we go through the exercise tomorrow that we pay attention to this law enforcement, because part of the concern of G being pulled out or collapsed in -- I'm sorry, L. Thank you. Part of the concern around dropping or collapsing L was to make sure that we pay careful attention to law enforcement.

M we've added a legal basis. N we have new language. We have not decided if that makes sense an ICANN purpose but everyone supports that language for going into the registrars' and registries' purpose. Okay? So that's where we are at this moment in time on the purposes.

The staff are going to send around a redline version and a clean version. So tomorrow we will have a fresh, clean version because as we agreed this morning, we're going to continue to iterate on our working draft. So we will have a new version. Tomorrow's a new day and we have a new version. Okay?

Print them? Yes, we can absolutely print them. Okay. So that's where we are in the purposes. Now I'm going to go to Terri for the logistics on the dinner.

Terri Agnew: Hello everyone. So just a reminder, (unintelligible) team dinner is tonight. I sent around an email. I haven't received - I just received a couple notices of a couple folks, so if you absolutely cannot attend just let me know. Otherwise we're hoping to see you there.

We're going to be arranging Uber rides. As soon as this ends, I'll go downstairs and getting folks Uber rides as well and getting everybody there. If

you'd like to walk, it's about a 20-minute walk. So we can go ahead and take care of that as well. As far as Uber rides, the ride itself will be like under five minutes waiting for the Uber.

Appetizers will come out at 7, 7:15 they'll come and take your order to place your entrée, and we'll have a lovely evening. Oh, Sol, S-O-L. I sent it out in the reminder as well.

Alan Greenberg: If we're starting at 7 that's an hour and a quarter from now. Why are we leaving from here?

Terri Agnew: Truly to get all of you in rides, it's going to take that long. By the time you actually gather your belongings and get downstairs and - yes, if you want to make your own arrangements, please go back to the hotel and make your own arrangements. But I'll make arrangements for those that want to stay here and leave from the office.

(Kaitlin): But be there by 7. Be there by 7.

Terri Agnew: Yes, by 7.

(Kaitlin): By 7 at the latest. Okay.

((Crosstalk))

Gina Bartlett: (Unintelligible) at 7 you cannot get in. No margaritas if you're after 7. Okay now we want to - thank you, Terri. And maybe a round of applause for all the organizing Terri's done for us. Okay. So the next thing we want to do is just check in on how you feel the day went, and we're going to use the keypad I think.

Grab your keypad. Did through your papers and find your keypad, people. Oh, cheater, cheater.

Man: This is not Chicago. You know that off.

Gina Bartlett: How am I ending the day?

Man: All right guys. (Unintelligible) grab your keypads. How am I ending the day?
How am I ending the day? All right. Five, four, three, two, one. Pretty good.
That's pretty good. If you add up A and B that adds up to quite a bit. Right?

Man: I just - I mean for me personally I voted because of versus my expectations,
which were very low.

Man: How we like to set them. Yes? How many votes did what? Yes. That's okay.
You know, sometimes we end the day not in a great place. We would
encourage anyone who's more lower down on that spectrum to come talk to
us afterwards and let's try to figure out how to make tomorrow and
Wednesday a more enthusiastic day for your participation.

We had also promised at the very end, we'd love to end early but if there are
things that you want to share right now about what's working and what's not
working about how we are going about this business that we have here, now
is a great time, shout it out about what's working, what's not working about
how we are doing our job.

This is in the context of tomorrow we're going to dive into these documents.
All right? We're going to dive into some real specific work but thinking about
what happened today, what advice do we have for each other about how to
make this thing work better than today? Yes? (Collin)?

Collin Kurre: Yes, I just think that we have been kind of going around in circles for, you
know, for however many meetings, say 12 meetings before this. So it's really
great that we've like agreed upon some sort of methodology and I think that
you guys have done a pretty good job in bringing us back to topics at hand.

So I think that I feel like we've got a lot of progress done today. So I think it was positive.

Man: Great. Awesome, awesome. Jump in.

James Bladel: Yes, so, also thank you. I think this was worth probably a couple weeks' worth of calls, at least. So, you know, good use of the time and thanks for, you know, pushing us forward. Just one thought, and I don't know if - how to pull it off pragmatically, but with this group the queues get very, very long and I noticed that it was kind of a joke was like I was responding to something that happened 15 minutes ago. I'm asked to comment on a document that's changed four times.

I don't know if there's a way to have like two queues, one for like new topics or new concerns or one to respond to the current speaker. I don't know if you want to pass around a talking stick like summer camp or whatever but just some sort of function where you can say like, you know, (Matt) raises a point and then six cards go up, you know, and then by the time you get to the sixth point it's like I don't remember what (Matt) was talking about. So. And three new, you know, topics have been introduced in the interim.

I don't know if there's a way to separate new threads from replying and responding to the topic that's on the table. Just a thought. I figured you guys in your practice maybe have more experience there.

Man: Great. That's helpful. Anything else that we want to put on the table right now about the process? Okay. Anything else to say? Kurt Pritz?

Kurt Pritz Well it's already been said so same time, same place. We're going to start at 8:30 and we're going to start - we'll pass out the revised purposes as they are right now and then we'll get into the forms that we'll have ready for you. So those of you that know me know I've built my whole career on finding people to do work rather than me and that do it better me. So thanks to the CBI team

for doing such a great job today and for the ICANN support staff that built it all up.

END