ICANN
Transcription
EPDP on the Temporary Specification for gTLD Registration Data
F2F Meeting - Day 2
Thursday, 17 January 2019 at 18:30 UTC

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Gina Bartlett: …good on time, and I heard, you know, some grumbling about trying to meet late. So it's 1 o'clock, right, or is it 2 o'clock? It's 2 o'clock. It's 2 o'clock so the proposal is that we dedicate an hour, we're going to have two 30-minute increments. We have some people who worked over the lunch and have continued to refine the purpose language. So we want to get that purpose language up, see if we can come to closure on the Purpose 2 Recommendation 2. At the end of the hour if we can't, I think maybe we check in and we might move on, okay.

At 4 o'clock, JJ is coming in to talk about the memo; people asked for that and that's the time that he has. If you change that in your priorities then that's, you know, up to you all. But the other thing is that over here, these stickies, if you decide to get up and walk around, the stickies represent all the remaining topics and the red star on those stickies are the priority items out of the survey. Okay.

The last wrinkle is that Kristina does have to leave and so she's working on the Purpose 7 language which was to kind of revisit the optional and voluntary language so that it wasn't as – people were stumbling over that, she has to

leave at 4:00. So I think by 3:30 we need to go back to that Purpose 7, revisit that language with Kristina before she leaves. All right? So does that sound good? We're going to do an hour – we're going to do 30-minute increment check-in, a second 30-minute incremental on Purpose 2 Recommendation 2, then we'll see what happens.

We have like 30 minutes to play with. And then at 3:30 we'll need to go – or right maybe after that we need to go to Kristina's piece, have a break and then do the legal component, okay?

So David's getting that up there. I think, you know, where we left before the break is that we had the creative groups which was super helpful and insightful. I know not everyone's on board with having a refined Purpose 2 but we are headed into the direction of a refined Purpose 2 that is very clear that it's an ICANN purpose, right? It's very clear that it's an ICANN purpose.

And so we're just giving these guys a minute to do that and we're going to try to see if we can get to a place where we have some language we think we can all live with. We may have to sleep on it and come back tomorrow – I know I hate to say that but it's probably true, that – but we would move into some other topics.

David Plumb: Okay great. So what we're going to put on the board right now, and I'm going to do a quick caveat because Stephanie came up to me five minutes ago saying I have some additional language about getting rid of the purpose and putting some additional language somewhere else.

So a quick caveat to that is happening. But for those who are feeling some momentum around the new Purpose 2 language, just as we were breaking for lunch a subset of folks tried to merge A and B, the Group A and B together,

and then there was some additional work just before we sat down right now about how to resolve this issue of do we refer to SSR or do we refer just to mission and the bylaws?

And what Marika can help put up right now is what I think Kristina, and sorry to call on you, is what you were trying to express. And I think it hopefully is what this group – this sort of group of folks was also trying. So let's take a quick peek at it and see if it's doing what we want it to do, okay?

Okay, so what's happening here is taking text directly from the mission statement, and 1.1 of the mission statement of ICANN, and by putting that broader text in, you're not necessarily limiting it to SSR, you can also pull in those two annexes which Chris mentioned earlier which are important because those two annexes in the mission refer to IP and things like that; and it's directly coming out of the mission statement language, all right?

I don't know if it ended up being proper English, you guys can see, or not, right? But contributing to the openness, interoperability, resilience, security and/or stability of the DNS, right, those – that language is textual, you know, exact language from the mission, right? In accordance with ICANN's mission through enabling responses to lawful data disclosure requests. Right?

So to some degree this is a merger of the two groups where the one group wanted to just say, bylaws and mission; the other group had SSR, and now we've found a way to put in the actual mission text that hopefully then grabs onto the issues that are important to people at the table.

((Crosstalk))

David Plumb: Yes, why don't we do that? Let's pull back from the table just for a moment in your groups, huddle on this for a second, have – let's do a five minute clock on this…

Gina Bartlett: Two minutes. Two minutes.

David Plumb: Two minutes.

Gina Bartlett: Yes.

David Plumb: Yes, okay, I like the – two minutes, guys. Pull back from the table.

Gina Bartlett: Two minutes in your group. Talk through this proposal for Purpose 2.

David Plumb: Yes.

Gina Bartlett: In your group, talk to your group members please, talk to your group.

((Crosstalk))

Gina Bartlett: The new version doesn't work for you guys? Okay.

((Crosstalk))

Gina Bartlett: Okay. You need to start the clock again, please? And maybe start it with 20 minutes – 20 minutes, because we're into our first 30 minute segment. Thank you. Okay so I'm hearing frustration with this proposed text that's on the screen because it doesn't feel active enough and people are missing the like contributing the maintenance of or ensuring the openness; they feel like it's not active enough, is that a fair characterization?

((Crosstalk))

David Plumb: So let's…

((Crosstalk))

David Plumb: Yes, okay. So this is going to be – we're going to have to be patient – guys, writing in real time is super challenging so we've got to be patient with each other, right? So let's throw out a couple ideas here. I just heard folks saying let's go back to the language around contributing the maintenance of, right?

((Crosstalk))

David Plumb: Or maintaining, yes.

((Crosstalk))

David Plumb: Right. There's also – there's another option of starting it with ensure, right, which is what purpose – what group – what the Group B did, okay? Right.

((Crosstalk))

David Plumb: Okay, yes, and Milton.

Gina Bartlett: Kavouss is up so he's waiting.

David Plumb: Oh great. Thanks, Kavouss, yes. Milton, yes.

Milton Mueller: So the contributing to – it was actually a very accurate and precise wording that was suggested by Kavouss because it – you don't maintain all of those things solely by enabling responses to lawful data disclosure requests.

David Plumb: Right.

Milton Mueller: So it – we definitely want to keep that wording. And I can't see how that hurts anybody's interest to say that. And ensuring, again, that is a way big overstatement of what happens when you enable responses to lawful data…

David Plumb: Yes, so just to be clear, this seems like a bunch of folks feel comfortable with this language of contributing to the maintenance of because it's a recognition that you don't own the whole thing, right? Okay. Okay great. So we can – that's one part of our problem. The other part of our problem is what we name in terms of the pieces of the mission that we are referring to, right? That's another issue here.

And there was a question mark whether it's helpful or not to have this longer phrase that gets pulled out of the mission, right? I don't know if people have a specific suggestion about if it was – if this is better or worse than just saying SSR or saying nothing at all. We need some guidance here, folks, about what you can live with, right? And Kavouss, yes, thanks.

Kavouss Arasteh: I think we are mixing up the situation. I would like to hear formally from the people how the disclosure of the data or data elements contribute to the openness and how it contribute or maintain the interoperability. Some explanation was given but I'm not convinced. This happened during the lunch break; we did not discuss that. And I am not very comfortable to the term "openness and interoperability" here; connecting that to the disclosure of information. This is paraphrasing something which I am not comfortable with,

so I have difficulty to inject the openness and interoperability here in connection with the data disclosure.

David Plumb: Excellent.

Kavouss Arasteh: …nothing to do with these two things. Thank you.

David Plumb: Yes, that's exactly the right question. How is that helpful? Does it create problems for us? Who's first? Benedict, why don't you jump first and then, Alex, why don't you jump into that?

Benedict Addis: I have a direct recent use case of interoperability being improved through data disclosure. So SSAC recently did a project where we helped organizations that were using the old DNS SEC keys, so they were using an outdated version of DNS SEC and the old keys and their DNS SEC implementations were going to stop working at a particular date, so we reached out to them using their name server Whois records to tell them that, hey, by the way, you're using the old keys.

And that was SSAC and ICANN and my own organization doing that, so there's a direct example. I don't know much about openness; I can't give you a use case of that but I'm sure somebody can think of a good one. Cheers.

David Plumb: Alex, you want to weigh in on this? And in part I just want to name that adding more words was something of a hopeful nod that this would solve some of the concerns of IP and others not seeing themselves in this. So, Alex, can you speak to that?

Alex Deacon: Yes, thanks. It's Alex. Yes, I'm painfully aware that this impasse – I think we're really close and I'm painfully aware that this impasse is now coming

down to, you know, satisfying or kind of giving me some – making me more comfortable with regard to ensuring that IP interests are included in this and I appreciate Kristina's attempt and others attempts to get to that point. It's not clear to me that just by adding "openness and interoperability" does that. I'm not a lawyer.

I've drafted some other text, which actually explicitly – that takes more of the text from the bylaws and adds it to this mission; whether that's going to help or not, I don't know. I could share that.

David Plumb: Just read the key part of it.

Alex Deacon: Maintaining – how did we end up?

David Plumb: Contributing to the maintenance of…

Alex Deacon: Contributing to the maintenance…

((Crosstalk))

Alex Deacon: Well let me read it first.

((Crosstalk))

Alex Deacon: Maintaining to the openness – sorry, contributing to the maintenance of the openness, interoperability, resilience, security and/or stability of the DNS including policies in the areas described in Annex G1 and G2 in accordance with ICANN's missions through enabling – I think requiring would be better there – responses to lawful data disclosure requests.

David Plumb: So make specific references to those two annexes, okay. Yes, okay so the –
                  what Alex just put on the table was explicitly making reference to these two
                  annexes that are in the mission and bylaws, okay. All right. Quick reactions to
                  that? Milton, Kavouss, is that a new hand? No. A new hand. Let's go to
                  Milton then go back to Kavouss.

Milton Mueller: So yes, I think again we're trying to turn this purpose back into what it was in
                  the temp spec which is clearly not going to be acceptable. I think I would call
                  Alex's attention to the fact that Recommendation 2 specifically calls out the
                  consideration of intellectual property infringement and DNS abuse cases as a
                  basis for disclosure.

                  And I don't – I mean, I think that's a satisfactory resolution of this issue.
                  We're talking here about a general purpose for ICANN. Some of us – many of
                  us are uncomfortable with that to begin with, remember, and it, among the
                  purposes got the least amount of support.

                  And when you're saying that invoking specific annexes in the bylaws as part
                  of a purpose then I think you are, you know, stretching the consensus way
                  beyond the breaking point. So I would be – if I were you I would focus more
                  on what goes into Recommendation 2, although again I think you have
                  already got what you need in Recommendation 2.

Alex Deacon: Can I just quickly respond?

David Plumb: Absolutely. Just quick response then we'll go to Kavouss, yes.

Alex Deacon: Again, the use of just SSR to me, from what I understand people's
                  interpretation of that rules out IP interests in the purpose. So I understand
                  we'll be considering it in Recommendation 2. Actually Recommendation 2 I

think is fine; I agree with that. I'm concerned that the text that we're working on now for Purpose 2 basically straight up front, day one, rules out any IP interests because SSR is very specific and narrowly interpreted.

Gina Bartlett: So I'm going to go to Kavouss but then, Diane, I'm wondering if I can come back to you since you were involved in the group that crafted that initial language and maybe help answer Alex's question from at least your point of view, for IPC? Kavouss.

Kavouss Arasteh: I'm sorry, I think we breaking the rules of ad hoc or small group getting together, working for 45 minutes, having something and all of a sudden a stranger in the lunchtime, somebody comes and brings the issue of openness and interoperability, which I fully agree, but has nothing to do with the disclosure of data.

So I suggest we delete these so and go back contributing to the maintenance of starting with stability, security and resiliency and so on, so forth and not reverse that and not put or – is not or in between.

This is taken from bylaw but from other context, so I do not agree with the inclusion of openness and interoperability in this text relating that to the disclosure of data. We should go back what we have agreed before lunch and that is respecting the people getting together, giving a lot of concession and now all of a sudden somebody comes and change that; it is not fair. I'm sorry, it is not fair.

David Plumb: Thanks, Kavouss, for particularly laying out the concerns about those two words. I will say that nobody agreed to anything before lunch; we came up with some creative ideas and we're playing around with those ideas. So we're not in a zone of where – there was some pre-agreement, okay? This was just a

space of putting some ideas down on the table. Kurt, you wanted to say something?

Kurt Pritz: Thanks. Alex, I want to bring your attention to the original initial report where it relies only on SSR in the Recommendation 2 that we published. So, you know, I'm personally of the opinion that that's why we beefed up – that was the original concession we'd skinny down Purpose 2 and beef up Recommendation 2 which is what I think we did.

And, Kavouss, you know, thanks for your intervention. I think that, you know, this isn't a paraphrase that's in here; people were looking for precise bylaw language so it's a direct lift from the bylaws which is exactly right. Benedict answered your question and gave you a precise example of why interoperability belongs there; maybe openness doesn't, we can take it off, but we should settle on that.

So with that, you know, we have pretty good – this is pretty good. I thought the other one was pretty good. I don't know if you want to put them up side by side…

David Plumb: Yes.

Kurt Pritz: …or…

David Plumb: We definitely could.

Kurt Pritz: …or just…

Gina Bartlett: We actually have extra papers (unintelligible).

David Plumb: Yes.

Gina Bartlett: We also have papers with the copies if anybody wants it.

David Plumb: Yes. So again we've got different options in front of us; we're playing with words to see if we're addressing concerns. So folks, I really want to laser in, and I'm going to go over all these cards that are over here – laser in on this how do we resolve this issue of how we're referring to the bylaws and the mission, okay? How do we make, you know, let's see if we can find some solution. We've got another five minutes or so to do that. Alan, and then Mark, yes.

Alan Greenberg: thank you very much. Alan Greenberg. We got to the stage where we were drafting something new here to try to come up for a purpose which clearly makes this an ICANN purpose and why we're doing it and the justification for why ICANN can later take the unified or whatever we're going to call it access model and impose it on contracted parties. If I remember correctly, that was the logic we got here.

I suspect the words in this statement right now are not going to be wide enough to do that. May I finish the sentence, Milton?

((Crosstalk))

Alan Greenberg: That's correct, you are. So I suspect after we actually build that access model proposal we may have to come back and refine this. But this is good enough to get us past this door right now. I think there is general acceptance we might have to come clean this up after we finish Phase 2. Phase 2 will give us an opportunity to present things to the Board. Let's take this and go on and move on to some of the other subjects. Thank you.

David Plumb: Thanks, Alan. And to be clear when you say, "this" you're talking about a earlier version that doesn't have these two extra words, it just has SSR…

Alan Greenberg: No, I'm talking about the one that was there but I probably could accept something else as well.

David Plumb: Okay.

Alan Greenberg: I do have a problem if it is only SSR because – in one model it was – because that is not going to build a business case for why ICANN – why this is part of ICANN's – why this is an ICANN purpose for the access model. Perhaps combined with Purpose 6 or whatever it is on the intellectual property ones it would be. All I'm saying is we're close and we may have to refine the words. I think this is good enough to move on.

David Plumb: Okay. We got Marc, we got Hadia, we've got Milton. Mark first please.

Mark Svancarek: Mark Svancarek. My concern is very similar to Alan's and I wish we hadn't jumped from here – from the other options…

David Plumb: Should we pull up the other ones? Should we pull up the other ones?

Mark Svancarek: I really wish we would because…

David Plumb: Yes, let's do it.

Gina Bartlett: Can I ask for just a clarifying thing? If you're referencing another option if you could just say, you know, Group 1, Option A or B or Group 2, just so we

know because I – like I'm still not clear which one Alan likes. So if people could…

((Crosstalk))

Mark Svancarek: Yes, so I mean, specifically Option A with the last sentence of – what is it, Group 2, alternative or something like that, so but aside from that, and I'm grateful that we can look at that again, I just was wondering like where it says "enabling" does – is "enabling" language that allows us to later create a policy that would enable ICANN to, you know, compel people to respond to lawful data requests? So I mean, the word "enabling" seems very weak to me.

Now if we conclude that it doesn't foreclose the possibility of creating such a policy in the future, then I could live with "enabling." If we feel like it's in there for the purpose of foreclosing then I couldn't accept it and so I'd like some sort of feedback from the room on whether they think that the word "enabling" closes off that option or not.

Gina Bartlett: Great. It looks like Alan Woods has – do you mind, Hadia, if Alan responds to that and then I'll come to you. Go ahead, Alan. Oh you're not? Okay, go ahead, Hadia. Could you please put your mic on and say your name?

Hadia Elminiawi: Hadia Elminiawi for the record. So I just wanted to respond to what Alex said where he said that he's not sure that adding "openness and interoperability" would refer to – it means that we also refer to Annex G1 and Annex G2. And according to the mission here, it says, "The mission of the Internet Corporation for Assigned and Numbers, ICANN, is to ensure the stable and secure operation of the Internet unique identifier system as described in this section, the mission,"

And it says, "ICANN" and then it says, "In this role, ICANN's scope is to contribute the development and implementation of policies for which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS including with respect to gTLD registrars and registries policies in the areas described in Annex G1 and Annex G2."

So we have reference here to Annex G1 and G. And I would argue even with having only security and stability Annex G1 and G2 is according to the mission statement included. But I do understand that adding "interoperability and openness" fits more with what's in here. I'm also okay with Option A and B as well.

David Plumb: Great. Okay, great.

Gina Bartlett: I forgot Chris. I'm going to go to Chris because he was ahead of you.

Chris Disspain: Thank you. Two things, Option A says "requiring contracted parties to lawfully disclose registration data," and I would suggest to you that that is not necessarily the right way to say it because you can't guarantee it's going to be the contracted parties who actually disclose the information. So I wouldn't do that. I would recommend that Purpose 2 – Group 2's original purpose, "contributing to the maintenance of the security, stability and resiliency of the domain name system in accordance with the mission through enabling responses to lawful data disclosure requests" is sufficient because it clearly says that something will happen that enables those responses and that enabling could be ICANN responding, a third party responding or a registrar responding.

So my view, for – and this is my personal view for what it's worth – is that that is probably the sensible way to go whether you choose to put in openness and whatever else the other thing is. I actually don't think it matters frankly from my view, it's just more words for no good reason. But I do think that Option A is problematic because it's too specific about who's going to be doing the disclosing. Thanks.

Kurt Pritz: Marika, could you scroll down to the Group B saying the one that Chris was just referencing so we have that in front of us? Keep going. That one, yes. Okay. So Alan, Stephanie and then we're going to do a pulse check of what's an option here.

Alan Woods: Alan Woods for the record. So I agree with Chris, is taken that, number one. But more to the point, I think we should look at – and possibly Stephanie's going to talk about this because it's Stephanie's suggestion there with regards to recommendation – making it just for the recommendation. And I think there's a lot of merit to considering that at the moment because an awful lot of our problem at the moment is we're trying to come up with a purpose about something that we haven't really decided yet.

And it's very hard to put the cart before the horse effectively in this. And what that recommendation that Stephanie has come up with I think is very pragmatic in its approach because what it's saying is that, look, this is what we recommend to do, go through the process that we all want, you know, looking at this process, this access process, and then if it is necessary at that time to create the purpose based on what we have decided and what we've come up with.

So don't put the cart before the horse; don't put in a purpose at the moment with a proviso that it's going to change at some time in the future likely and

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just say this is the recommendation, let's go through the process and then accept the fact that this may require a purpose. And then it just makes things a lot easier. It cuts off this entire argument at the moment, make it a recommendation as we are to do because let's also remember that the purposes that we are creating are not going to be part of the consensus policy itself, it's the background information that is supporting the – that we're putting into the policy.

The recommendations are the important aspect to be perfectly honest. The purpose is just the window dressing and the homework that adds to the policy. So let's be clear on that. And I think Stephanie has made a very pragmatic approach there.

David Plumb: All right, Stephanie, you want to say a word about that and then we'll circle back over here.

Stephanie Perrin: Stephanie Perrin for the record. Thank you, Alan. Heart emoji. Now, I was basically raising my hand to say that one of the reasons that there is this uncertainty about exactly what ICANN's purpose is is the way to phrase it. When we keep talking about responses to lawful data disclosure requests, there are any number of lawful data disclosure requests that are basically discretionary, academic research being one of them that just leaps to mind. That doesn't affect the security, stability and resiliency and I don't think ICANN has any business nor any remit to get in there and force anybody to make such a disclosure.

So we need to go through these and figure out what ICANN's mission is very clear about and what it is not very clear about. And I don't think the IPC needs to worry about this because there is definitely – it's in there, you know. So what we need here is a durable placeholder for that purpose because I have

been more or less convinced by Chris that maybe ICANN if it's going to enforce this has to have it, Chris and Ruth, but we don't know yet. And until we sort out that controller relationship we can't really go any further. Thanks.

Gina Bartlett: Okay. We have like five people in the queue right now. I'm going to go to the five – can I just press upon you to try to be as concise as possible, not because we don't care it's not important what you have to say just from the sake of managing our time. Thank you.

Alex Deacon: Yes thanks. It's Alex. Yes so I think – what do I think? I agree, Alan, I think it's important – so in our small workout group I tried to take the tact of let's talk about the requirements of what this purpose should meet versus the details because I agree that the cart is before the horse and no matter what we write we will have to come back no doubt and refine and make it better and that's fine, so a placeholder is good. I do believe that a purpose is required.

I believe the purpose should meet the requirement that it allows ICANN to do what Chris described earlier. I believe a purpose should ensure that it gives the appropriate risk and liability cover that the contracted parties require in all of this. And I would rather have a placeholder purpose that is vague and to be filled in later than have a purpose that kind of day one rules out IP interests by simply stating – by basically using the words "security, stability and resiliency of the domain name system" which rules out IP interests.

And so if we could come to an agreement where we all agree that this purpose is necessary and do it in a way where we don't have to get into the details, and can move forward then that would be great. I just need to make sure that I could – when I go back that I can convince my clients and my stakeholder group that their interests are going to be covered moving forward.

Gina Bartlett: Thank you. Alan G.

Alan Greenberg: Thank you. Alan Greenberg. My only concern, and I'll be very concise, is our purpose in Phase 1 is to provide the Board with a policy or the details of a policy to replace the temporary spec. If we ignore this completely and drop it, do we have a hole that we're essentially replacing things in the temporary spec we didn't like with nothing? Thank you. I don't know the answer but I think we need to make sure what we go forward with is a consistent policy the Board can implement.

Gina Bartlett: Okay thanks for your brevity. Mark, you put your card down? Thank you for your brevity. Chris.

Chris Disspain: I have a simple – I just have a question. I'm not clear if – if you put in a recommendation and the text of the recommendation is this or whatever, how – and you don't have a purpose, how do you get a purpose? If the – if you end up with a situation where you've made a recommendation, when does that – when does a purpose arrive? And how does it arrive? And what process is used to make that purpose?

Gina Bartlett: Marika.

Marika Konings: Sorry, this is Marika. My understanding that that is an objective the Phase 2 because it's specifically called out in the charter that work needs to be undertaken on that standard access model and my understanding would be that as part of that if a purpose is needed that would be defined and, you know, adopted as a policy recommendation similar to how that is done – how we are discussing it currently.

Chris Disspain: So why do we need any purposes then at this stage?

Gina Bartlett: Okay, Kavouss, appreciate brevity if possible please.

Kavouss Arasteh: I think we are turning around ourselves. The text that we had before us at the
                 beginning of this meeting was to maintain or somebody proposed to ensure
                 and relating that security, stability and resiliency to the disclosure of data,
                 which is not the case.

                 So we introduce a word to contribute to the maintenance of – that is the first
                 element that we have addressed. It was good. Then it was some sensitivity
                 with respect to a direct reference to the third party. We take it out and there is
                 no third party here.

                 So now we come back and introduce new things. So maybe the three days
                 working group should be three weeks. If every minute we bring new elements
                 and new discussions, we should have some sort of agreement with each other
                 that we cannot meet requirements of everybody. We must have some sort of
                 agreement with each other to see what is possible and what is not possible.

                 Once again I have difficulty to start the sentence with "ensuring" or
                 "maintaining" and link that to the disclosure of data. By this contributing I'm
                 okay. The last part, not reference to the third party I am not happy but I could
                 live with that. But I am not very happy to refer to interoperability and to the
                 openness, why both of them are a valid point but has no connection on the
                 disclosure of data. Thank you.

David Plumb: Okay, guys, this is what I recommend, oh Diane, yes, go ahead.

Diane Plaut: I feel like we came so far and we were so close to having agreement. And I
                 just want to see if we could circle back to getting something simple that really

aligns with most people's middle ground. So it would be Option A but just changing a little tweak to the language in line with what Chris had said so it would say, "Ensure that ICANN Org can meet the requirements of its mission and bylaws by requiring responses to lawfully disclose registration data requests."

Gina Bartlett: Say it again.

Diane Plaut: So it would say, "Ensure that ICANN Org can meet the requirements of its mission and bylaws by requiring responses to lawfully disclose registration data requests."

David Plumb: So there's been a lot of pushback on the word – on "ensure." There's been a lot of pushback on the word "ensure" so I wonder if there's a version of that that doesn't involve that. But…

((Crosstalk))

Diane Plaut: What's wrong with "ensure"? Yes, who has a problem with "ensure"?

Alex Deacon: This is not – I think someone's editing this on the fly but this is not what's being edited.

((Crosstalk))

David Plumb: No, no, if you go up – if you scroll up to Version A…

Diane Plaut: Yes, yes, go up to Version A, Option A.

Gina Bartlett: Lawful data disclosure requests…

Diane Plaut: "Ensure that ICANN Org can meet the requirements of its mission and bylaws by requiring responses to lawfully disclose registration data requests."

Chris Disspain: No, the word "disclose" – the word "disclose" is superfluous but other than that it works.

((Crosstalk))

Alex Deacon: To lawful disclosure…

((Crosstalk))

David Plumb: Okay guys, wow, so now we got like all these different options. I feel like one of the things…

Diane Plaut: It's simple, no?

David Plumb: Yes. Yes. This is what we need to do, folks, we actually need to sort things out and we're going to look at a couple different options that test this language of "ensure," test it with SSR or without SSR and then test the version that Stephanie put out in terms of putting all this in a recommendation. And then we're going to do some quick check-ins about what people can live with and what they can't, and then we're going to say this is the end of the road. Right? And so let's take a 10-minute break so that we can get this ordered up, yes, and because otherwise we won't be able to get the order, yes.

I would love to take that break and get organized and come back and we're going to do some quick checks of the temperature of what people can live with and not live with, all right? And then we'll see if we have at least a

pathway forward among these different options that people could actually live with, all right? So let's take a 10-minute break. In that break we can – progress on – so we're going to take 10 minutes and we'll be right back to you.

Gina Bartlett: On the break people work up some more language and we're going to try to test it against – can I – is that better? Okay, could I ask everybody to start looking – we want to do a little pulse check with the keypads in a minute but on the break some folks put together this option which is assist ICANN.org in meeting the requirements of its mission and bylaws by enabling responses to lawful request…

((Crosstalk))

Gina Bartlett: …support ICANN.org? Okay, "support ICANN.org in meeting the requirements of its mission and bylaws by enabling responses to lawful requests for registration data." Anyone in this room who can't live with that? Alan.

Alan Greenberg: I'm not sure how an ICANN purpose can be support ICANN?

Gina Bartlett: Oh.

((Crosstalk))

Gina Bartlett: What? "Support the ICANN mission and bylaws in meeting the requirements of" – oh, no, it says – it says – that has mission and bylaws in twice; that doesn't work. Diane and then Stephanie. Oh you're not up? Oh, Mark, I thought you just went. Okay Mark and then Stephanie.

Mark Svancarek: So the way we worked through this is we thought what does the data do? The data supports ICANN. What does it support it to do? It supports ICANN to enable the – to enable responses. So we didn't really have a problem with using ICANN in – ICANN's name in the ICANN purpose. We agreed that, you know, this language is a little clunky but we think that it is factually correct.

Gina Bartlett: Stephanie.

Stephanie Perrin: Stephanie Perrin for the record. I don't believe that "enabling responses" is meaningful here. Somebody tell me what it means because if I was a data controller a data protection authority hearing this as a purpose I would assume that ICANN was setting up a system and had hands on to the data; that's object number one.

Objection number two is that – I think I've already said this but I'm going to say it again – there's any number of lawful requests for registration data and not all of them are part of ICANN's mission, academic being only one example; there's umpteen others that are related to law enforcement but that are not related to security and stability of the system, i.e. looking for missing persons, humane society activities…

((Crosstalk))

Stephanie Perrin: …you know?

Gina Bartlett: Okay.

Stephanie Perrin: Doesn't work.

Gina Bartlett: Okay. Are you responding to Stephanie? Okay Mark's going to respond and then I've got Chris.

((Crosstalk))

Mark Svancarek: Yes so our consideration is not that this purpose has to address all of those other – you know, so law enforcement doesn't need to be involved in here, right, because they have their own bases and their own extraordinary powers. This, you know, the focus of this is really on third party things. Enabling responses does not require the response to be "yes" you know, it still retains the discretion. But, I mean, we added this in because right now we don't get responses to our requests, so this is an actual practical thing to have that in there.

Gina Bartlett: Okay. Chris and then Kristina.

Chris Disspain: So just to – so two things. Just to go back to the – to Alan's point. "Support ICANN Org in meeting the requirements of its mission and bylaws" is effectively a change of wording because some people had an issue with the word "ensure" but the original one said "ensure that ICANN Org can meet the requirements" so that's not – it's perfectly fine to say "support ICANN Org in meeting the requirements" that's fine.

Secondly, in respect to what this might lead to, and Stephanie's point, I had understood that – that what we were not necessarily with this specific wording but generally speaking before lunch what we had talked about was agreeing some wording of a very sort of – of a rough purpose like this with a recommendation and then there was the recommendation on this piece of paper that I've got here which goes into some significant detail of what this would look like from the point of view of a policy.

And that surely would be the answer to Stephanie's question, which is that the recommendation makes it very clear that there are certain matters which would in fact be the subject of this purpose. So I had thought that that's how we dealt with that before lunch and I don't think we should lose sight of that at this point.

Gina Bartlett: Thanks for that reminder. Kristina.

Kristina Rosette: I should note at the outset that I have a preference for the Group 2 Purpose 2 alternative. And I think what I'm really struggling with and I think we need to be able to answer this definitively, clearly and easily is I'm looking at this and saying if someone asks me what requirements of the mission and bylaws are we talking about? No idea. And more specifically, and this goes to a comment that I put in the chat, I don't think it's accurate to say that taken alone, "Enabling responses to lawful requests for registration data," meets whatever those requirements are. In other words, it might be part of it. And I guess where I'm going with it is that I think the language is broader and vaguer in a way that doesn't necessarily help us. Sorry.

Gina Bartlett: Okay Milton briefly and then we're going to go to David and I think do a quick check. Are you still up again, Chris? No, okay.

Milton Mueller: Well I agree with Kristina that I prefer the original revised Purpose 2 that we came out of before lunch, however, I don't think this one is so bad. I just want to argue uncharacteristically with Stephanie a bit. The fact that we're enabling responses to lawful requests for data – registration data does not mean that every answer to every request is yes. And by "enabling" that word was very carefully chosen in the original group; we mean essentially that we are sort of

authorizing ICANN to develop a policy about that, which I think we all agree we want to do.

And I also agree with Chris, for once, that we need to look at this in connection with Recommendation 2 because that gave us greater specification. So I really don't think we're moving forward much by picking at things that probably don't have much consequence. We just need to have one of these two Purpose 2, you know, in there and move forward with the recommendation when we get into Phase 2.

Gina Bartlett: Thanks, Milton, for that, appreciate it. Okay everybody should have a keypad if you're a member of the team. Does everybody have a keypad?

((Crosstalk))

David Plumb: …whether it's 1 or 3. How can you answer? Now, folks. (Unintelligible) version the one we were just working on. (Unintelligible) on that A button if you like it; (unintelligible) like but I can live with it. It's I can't live with it. You want to change your response you click it again, it'll take whatever you get (unintelligible).

Folks, and this isn't about counting votes or anything, we're taking a pulse. This is normal a formal consensus call or anything, this is (unintelligible). Okay I think that's it. Does anybody need more time? Anybody need more time?

((Crosstalk))

David Plumb: …saying they can live with it, got 29% saying (unintelligible) version of this group (unintelligible) ended up with before lunch. You can't see it very well.

((Crosstalk))

Gina Bartlett: Oh.

((Crosstalk))

David Plumb: Oh…

((Crosstalk))

David Plumb: A.

((Crosstalk))

David Plumb: Getting rid of...

((Crosstalk))

David Plumb: Again this is not – where we're at. Anybody left to vote?

Gina Bartlett: We're not voting, taking a pulse.

David Plumb: Yes. Anybody left to push the button?

((Crosstalk))

Benedict Addis: I'll be clear about my decision. My decision is that I really like the text but I
                  really think that we should have something in Purpose 2 now so logically I
                  have to vote…

((Crosstalk))

Benedict Addis: I have to vote C.

((Crosstalk))

David Plumb: Go against it because if you need something in Purpose 2 it's a new thing.

Gina Bartlett: Okay.

David Plumb: All right so folks, the reason for taking the pulse like this is to show like where do we want to even put any more energy into this, right? I feel like we've been around and around and around, right, and we're all clinging for what is our perfect solution.

Many of us have done a ton of work, right, to try to – many of you have done amazing work trying to solve each other's problems. And now we're going to have to decide if we want to try to go any further or we're not going to be able to solve this.

It seems to me, as with you, oops, that with the 10%, you know, again we're not actually looking at exact numbers, but with the smallest number of I can't live with this is here, right? Okay. So I just want to check for folks who can't live with this like if this is it, this is the last hurrah, we got no more time here for folks who are in that 10%, at the end of the day if this is the only thing you got, are you still going to answer, "I can't live with this"?

Right, so I'm opening this up to the folks who said, "I can't live with this," to say if this is what this group goes forward, is there one last thing we could do,

anything else before we just move on and you'll just have to register that as a sort of minority opinion? Stephanie, with a mic please.

Stephanie Perrin: We could always – Stephanie Perrin for the record – vote again on my proposal assuming that it is a replacement recommendation text accompanying that purpose.

Chris Disspain: I thought that was a given; if we had a purpose we definitely have your text.

David Plumb: I think people like your text. I think…

((Crosstalk))

David Plumb: …the fact that…

Chris Disspain: Text is great. Text is fantastic.

((Crosstalk))

David Plumb: I think everybody likes the text; I think what they didn't – what was the big negative was they didn't like taking Purpose 2 away. But what you're saying is you actually feel as long as your text is there you're feeling more like you could live with this?

Stephanie Perrin: No, I think, you know, I mean, I don't think it's wise to put a purpose in before you figure out who the controller is.

David Plumb: Right.

Stephanie Perrin: So, you know, and that's kind of (sistian premodial) as I keep saying. But if you're – I mean, who am I? I'm only one vote.

David Plumb: Yes, okay. Great. Alan, Alex, again, we're at that place if you said you couldn't live with this, right, did you say you couldn't live with this?

Alan Greenberg: No, I didn't but I'd like to be able to say something.

David Plumb: Okay. But that's the point. Like we got to really.

((Crosstalk))

Alan Greenberg: I understand what you're asking…

David Plumb: Yes.

Alan Greenberg: I would like to understand why people can't live with the other one also.

((Crosstalk))

David Plumb: I think that was the purpose of doing this was like focus in. We're done. We're at the end of the road here.

Gina Bartlett: But I would invite people at the break maybe to go – at the next break maybe you could communicate to Alan why you didn't like that other one.

David Plumb: Yes. But not…

((Crosstalk))

David Plumb: …not in the spirit of revising.

Gina Bartlett: …just not in the plenary.

David Plumb: Yes.

Gina Bartlett: Not in the plenary. Yes.

David Plumb: Okay, Alex, talk to us here.

Alex Deacon: So surprise, I, for this one I voted can't live with it again because the purpose
                    as currently written does not allow access – well does not enable responses to
                    lawful data disclosure requests for IP interests because SSR does not include
                    IP interests. That's the concern. And I'm happy to be convinced otherwise but
                    this is how I've seen things. If I'm being overly sensitive here, let me know.

David Plumb: Okay.

Alan Greenberg: Why did 6 not cover it?

David Plumb: Okay, so all right folks, we're in this zone, the vast majority of people in this
                    room are ready to move on. Okay? The vast majority of the people in this
                    room – and what we're trying it probing for that full consensus by seeing how
                    if there's something else we can do to solve these problems. Thomas.

Thomas Rickert: Something completely different, I have lost track whether our discussions here
                    are addressing all the public comments, you know, because we're…

David Plumb: Yes.

Thomas Rickert: …we're here to analyze public comments. So I'm not sure whether somebody in our support team has followed this? I think we've covered a couple of points with what we did here, but I think we should just ensure that we have addressed this appropriately.

David Plumb: That's great. And I will remind everyone that we've started all of these conversations by reviewing the public comments and reviewing a summary of the public comments and so that has been the stepping stone for all of these deliberations. Alex, did you – oh wait, did you one more? No, okay. Georgios.

Georgios Tselentis: Yes just in response with Alex concern, I think here we need to take into consideration that this – if this is the purpose that we are going through and we take also the recommendation as it is drafted now and there is also the part of the recommendation that refers to the IP requestors, the question for me that might a little bit here concern, is this enough? Is this enough – this combination for your community as a guarantee that if they have – if they pass later on on the access model and they prove that they have the lawful basis to do so that they can do so. I think this is what is the question for you or not. And for this, again, I'm seeking more legal – somebody with more legal background to answer that.

David Plumb: Okay. Let's give this a quick round. That's a question over to this side of the table. Don't forget that question. I want to go to Kavouss who put his hand up and, Ruth, do you want to weigh in on that? Okay, great. Kavouss, and then we can go…

((Crosstalk))

Kavouss Arasteh: Yes, David, you have drawn us to some sort of the temperature measurement…

David Plumb: Yes.

Kavouss Arasteh: …you have done that. The only thing before you is that those who cannot live
                  with that could express their views in one way or other. They can't go back
                  and we cannot restart again by amending. Is impossible, procedure is like this,
                  otherwise we cannot have any trust on any future actions because you've
                  taken the temperature whether you call them poll or vote or whatever but that
                  is done. Now those who have – against that, they could express their views
                  and that will be recorded somewhere if necessary. Thank you.

David Plumb: Okay. Okay. Yes. So let's just quickly check in, in the spirit we are not going
                  to get sucked to a big revision moment here, but Ruth, do you want to make a
                  comment here?

Ruth Boardman: In the light of that comment I'm not sure I'm allowed to. There's a small
                  drafting change that could be made which I think would help with the point
                  that Stephanie made. So one of the point that Stephanie made is that lawful
                  data disclosure requests could include things which are nothing to do with
                  ICANN's mission and the example you gave was academic requests which
                  somebody might wish to respond to or might not but shouldn't be mandated.

                  That could be addressed by reordering the wording. If you reordered the
                  wording to say "Enabling responses to lawful data disclosure requests where
                  necessary to contribute to the maintenance," dot, dot, dot, then it would keep
                  the spirit of this but would make that point.

Kavouss Arasteh: Point of order?

Kurt Pritz: Go ahead, Kavouss.

Kurt Pritz: Sure, Kavouss. Yes. Go ahead.

Kavouss Arasteh: Point of order?

David Plumb: Yes.

Kavouss Arasteh: Yes, any amendment should be put to the vote. If it is agreed then we take it; otherwise we cannot – you do something, other does something else and we can't go that unfortunately. I'm very sorry, we cannot go to that exercise. First of all, we cannot take you as a member.

David Plumb: Yes.

Kavouss Arasteh: You are legal advisor, that's all. Number one, you are not a member. It is up to the member to decide. But if any member wants to propose amendment according to the international rules, amendment would be put into the vote. If it is accepted, then the whole text including amendment again go to the vote. This is the procedure of work, so, I'm very sorry, I cannot agree with that…

((Crosstalk))

Kavouss Arasteh: …that this changing making a small change.

((Crosstalk))

Kavouss Arasteh: We can't do that, thank you.

David Plumb: Hang on.

Kurt Pritz: Okay, can I have some quiet? Kavouss, Kavouss, first, you asked we should hear from the people that can't live with it to understand why. And Stephanie was one of the ones that said she could not live with it. So Ruth's comment addressed the concern you had to listen to the people that couldn't live with it.

Second, we're investing quite a bit to have Ruth here and we're lucky to have her; so I, you know, we chatted before she commented but I'm really pleased she commented because it actually moved the group forward.

Third, we're not going to have votes by people every time but we're going to get the sense of the room that everybody either approves or doesn't like anybody's intervention here, so, you know, I make interventions from time to time sadly. So please accept that constructively.

Kavouss Arasteh: Excuse me. Accepting what? Could you put the text that is proposed on the screen…

((Crosstalk))

Kurt Pritz: Yes, of course.

Kavouss Arasteh: What is the text?

Kurt Pritz: Of course we will.

((Crosstalk))

Kurt Pritz: Of course we will.

David Plumb: Yes, so okay, so folks, in the spirit of hearing from those who couldn't live with it, right, which is a very important thing, we want to hear from those who couldn't live with it. We don't need to dissect further, okay, but from those who couldn't live with it let's hear about that concern and maybe there's a quick fix like what Ruth says or maybe not. Margie.

Margie Milam: This is Margie. Is there a way to not change the purpose but in the explanation in the report mention that it's not intended to preclude intellectual property interests? So in other words, we're not changing the wording but we're just clarifying Alex's concern that he feels that intellectual property purposes seem to be excluded from this purpose.

David Plumb: So you're making a specific suggestion that elsewhere in the document there's a mention, perhaps in Recommendation 2 or somewhere…

Chris Disspain: Is it not already covered in Recommendation 2 where it says, "What are the legitimate purposes for third parties to access registration data?" bullet point – second bullet point in Recommendation 2 alternative text thingy. Does that not cover it? It's not specific but it says that one of the things that will be done is to figure out which third parties will have access.

David Plumb: Let's give Margie a second to think about that. Let's just pause for a second. I wouldn't do that just yet, not quite yet, not quite yet, no. Okay, again, hang on one second here, Margie, you want to come back on that?

Margie Milam: Sure. The reason why I suggest we do it in the description of this purpose, not – we're not changing the words but when we explain it, is because we don't want to get to the point later on in Purpose 2 Recommendation 2 where someone will say, well, intellectual property interests aren't included in purpose – and so we just want to ensure…

David Plumb: Right.

((Crosstalk))

Margie Milam: …tie them together so it's a footnote or something but there's not – I want to avoid the argument later on that intellectual property interests were not intended to be considered in this purpose.

David Plumb: If we were to create a footnote in Recommendation 2 exactly where it makes reference to intellectual property, right, and in that footnote you say the intention of the EDP, whatever you guys are called, EPDP group, right, is that Purpose 2 includes intellectual property, right, that's what you're saying?

Margie Milam: Yes.

((Crosstalk))

David Plumb: And, yes…

Milton Mueller: You want to say it does not – does not…

David Plumb: Does not preclude. Does not preclude. Okay…

((Crosstalk))

David Plumb: No, it would be in the recommendation. So this is what – we're going to type this up in just a second, folks, so we're not missing anyone. All right? So what we're saying is to address the concern of someone who is in the 10% here, we can add a little footnote in the recommendation when it talks about intellectual

property, right, to say EPDP when it wrote Purpose 2 did not mean to preclude IP in the – covered under Purpose 2. Okay? So I can write that up. Okay.

And then the other issue that Stephanie brought up would be flipping this thing on its head. I don't know how much you guys care about that. It feels like more dramatic surgery that I don't want to do. So I think it's okay, yes? Okay. So let me just say – maybe we can do it on a flip chart, actually? So what we're saying, folks, is we keep this as it is, we keep this as it is. Now were you someone who voted – said you couldn't live with it?

Chris Disspain: I'd like to see the proposed text of Margie's amendment.

David Plumb: Exactly. We're going to write it up on the flip chart.

Chris Disspain: Wonderful. I can't read that. On a screen if possible.

David Plumb: Okay, we'll put it on a screen.

Chris Disspain: Sorry.

David Plumb: Okay. Can you do that? Okay. All right. Folks, so the proposed language – and help us out, Margie and others, with this, in a footnote on – in Recommendation 2 where it makes reference to intellectual property we say, right, in Rec 2 – you guys ready for it? Who's going to help me do this? "The EPDP team" – or just, you don't even need to say that. You can say – yes, just say "Purpose 2 does not preclude…"

Gina Bartlett: This does not preclude IP interests.

David Plumb: Right. Purpose 2 does not preclude IP interests.

((Crosstalk))

David Plumb: Okay? Marika.

Marika Konings: Yes thanks, David. This is Marika. I'm just looking for clarification because
                  we've earlier discussed or everyone liked Stephanie's language. Is that
                  intended to replace existing Recommendation 2 or it's in addition to it? No,
                  no, not the footnote; I'm talking about previously we spoke about Stephanie's
                  recommendation. Is that an addition or it's a replacement? We're just needing
                  guidance here for what we put in the report.

David Plumb: Yes, that's – we're going to deal with that in just one sec. first we're going to
                  get this and then we'll do that. Yes.

Marika Konings: Okay so the footnote will go…

David Plumb: Wherever…

((Crosstalk))

David Plumb: In whichever version.

Marika Konings: Okay.

Milton Mueller: Could we – excuse me – be more precise? So the current wording of the old
                  Recommendation 2 says, "The EPDP will consider disclosure in the course of
                  intellectual property infringement and DNS abuse cases." I would have the
                  footnote, "intellectual property interest" is a very vague term, so I would say,

"Purpose 2 should not be construed to preclude disclosure in the course of intellectual property infringement.'

David Plumb: Okay great.

Milton Mueller: Should not…

((Crosstalk))

Milton Mueller: "Purpose 2 should not be construed to preclude…"

((Crosstalk))

Milton Mueller: Get it bigger once…

David Plumb: Okay we'll get it bigger in a second; let's just get it up there and we'll get it bigger.

Milton Mueller: "…to preclude…"

Chris Disspain: I'm sorry…

Milton Mueller: "…to preclude" – you're missing "preclude" there.

((Crosstalk))

David Plumb: We're not voting.

Milton Mueller: Don't interrupt us; let us get this and then we can vote on it. So "Purpose 2 should not be construed to preclude disclosure in the course of intellectual property infringement."

((Crosstalk))

David Plumb: In the course of investigating.

((Crosstalk))

David Plumb: Okay. So where this goes, folks, and Benedict, guys? Excellent, okay. Am I in the way? Sorry. Okay, where this – so the two options there. Essentially what we're doing is when we mention intellectual property in Recommendation 2, we create this footnote and we say this – and one of these two options, okay? First one's not English. So maybe we'll just stick with the second one, if the folks over here are okay with the second one we'll stick with the second one? Yes? Okay. All right, guys.

Okay, okay, so what we have now, folks, in front of us – and, Benedict, do you need to ask something or comment on something? Right. You okay with that, Milton? Just take out a couple words.

Milton Mueller: Okay.

David Plumb: Fine? Okay great. Okay. Benedict, do you still want to say something or are you good? Oh, okay. Well done. Okay folks, this is what just happened, all right, we have an open question mark about how Recommendation 2 ends up looking given Stephanie's additional proposed text to that, right? But what it feels like we're okay moving forward at this moment is with a combination of

that – what's on slide Number 3 now, the version of "contribute to the maintaining version…"

((Crosstalk))

David Plumb: Yes – "…of our purpose is contributing to the maintenance of" etcetera, etcetera. And we marry that with a footnote, okay? Do you guys need more time?

((Crosstalk))

David Plumb: You good? We're good. Okay, so we're good over here. And so this is my question, for all those who said they couldn't live with Purpose 2, by adding this little footnote, right, this version of Purpose 2, by adding this little footnote, are we able to move on from this? Are we able to move on now? Okay. Trang, I'm so sorry. Trang, please go ahead.

Trang Nguyen: Thanks, David. I just have a clarification question for the team. The part of the Purpose 2 text that says, "Enabling responses to lawful data disclosure requests," yes, that part. Does the team envision that this language cover requests for public Whois data? Or is this only reference to the nonpublic data?

((Crosstalk))

David Plumb: You need a mic. You need a mic. '

((Crosstalk))

Milton Mueller: The term "disclosure" implies that it's not public.

Trang Nguyen: So I guess my follow up question would be, as disclosure is a processing
                  activity, isn't a purpose required even if it's a disclosure of public data?

James Bladel: Public data would not involve a request because it would be public and
                  redacted and so I don't believe it needs to…

((Crosstalk))

James Bladel: …be subject to this or GDPR. But – yes…

((Crosstalk))

James Bladel: …go ahead, Emily, rescue me.

Emily Taylor: Yes, my understanding at the present time is that personal data is redacted
                  from the public Whois therefore everything that is publicly available is not
                  personal data and is not covered by the GDPR and is not within our scope. Oh
                  okay but it's not – so it doesn't engage the GDPR.

Trang Nguyen: Right so maybe – so I guess we haven't gotten to a discussion around consent
                  because I think under certain circumstances the registrant could consent to
                  have additional personal data published. Is that correct? And if so, does that
                  now require a purpose?

David Plumb: So, folks, let's run this out for a little bit because what ICANN's putting on the
                  table is there are situations when you've consented to have your personal data
                  out and then all of a sudden we're in GDPR-land and this is – this is not
                  dealing with that particular issue. Okay.

((Crosstalk))

David Plumb: Yes, Alan.

Alan Greenberg: Otherwise redacted – insert "otherwise redacted" in the appropriate place
                         there, then it only applies to stuff that is not public.

David Plumb: I have a strong reaction against making any changes at this point to this.

Alan Greenberg: Okay.

David Plumb: If we need to add something additional to deal with ICANN Org's concern,
                         we can add something additional, but I'm very scared about changing this
                         right now. Milton and Stephanie, and then Hadia.

Milton Mueller: I've had this up for some time but I thought that nobody objected to the legal
                         counsel's proposed switching around which clarifies some things without I
                         think doing any major change in the nature of the purpose so that it would be,
                         "Enabling responses to lawful data disclosure requests where necessary to
                         contribute to the maintenance of SSR of the domain name system in
                         accordance with ICANN's mission."

David Plumb: Okay. So that's a separate thing than what Trang is saying, okay. So…

Trang Nguyen: Sorry, David. Just want to – I just want to clarify, we don't have…

((Crosstalk))

Trang Nguyen: …issues with this language, all I'm saying is that, you know, there's also this
                         other activity that we're doing in terms of disclosure of the public data, some

of which may contain personal data that will need to have some kind of purpose to cover whether or not it's covered under this purpose, which is why I asked the clarification question or in some other purpose. But we don't have any issues with this language.

David Plumb: Okay great. Thanks. Stephanie, James, Margie, oh my goodness, okay. Wow, I really wish I had closed this off and then move into this particular problem.

((Crosstalk))

David Plumb: Yes, so guys. Hang on, hang on, hang on, wait.

((Crosstalk))

David Plumb: I just want to do – Trang, I'm going to…

((Crosstalk))

David Plumb: I'm going to park your particular issue right now for the moment and we're going to close this off and then we're going to come back to dealing with that, okay? So, guys, before we go down that road, all right, I just want to say can we all – while it's not our favorite thing, while we might be able to flip on its, you know, flip it in the other way around, can we all just work with this and move on? Yes? Because I really worry we could go many more rounds of twisting and turning and flipping. So I would strongly encourage…

Kurt Pritz: So at what point did we consider or not consider the…

David Plumb: Ruth's?

((Crosstalk))

David Plumb: We could consider right now if you think that's important, Kurt.

Kurt Pritz: I think that's important.

David Plumb: Yes. Okay. So…

((Crosstalk))

David Plumb: Yes. Okay, so hang on one second. We're going to flip it and take a look at it.

((Crosstalk))

Gina Bartlett: …responses to lawful – what does it says…

David Plumb: In order to or something.

((Crosstalk))

Gina Bartlett: I don't have the chat, I'm sorry, we're not on the chat.

Woman: Oh Skype?

Gina Bartlett: No.

David Plumb: No, just say it.

Gina Bartlett: Just correct it.

David Plumb: Please.

((Crosstalk))

Gina Bartlett: Where is it? Where necessary to contribute to – is there any other change? There.

Kurt Pritz: Well yes just…

((Crosstalk))

David Plumb: That fine?

Gina Bartlett: …of the security, stability and resiliency of the domain name…

David Plumb: Okay so now we got a problem because "where necessary," right? We all could agree before and now we got a problem "where necessary," okay?

((Crosstalk))

David Plumb: So what happens if we just eliminate "where necessary" as we say? I don't know what we're doing. I don't know, but it's okay.

((Crosstalk))

David Plumb: Yes.

((Crosstalk))

David Plumb: Okay. Let's look at this for a second, folks. Let's look. We were able to walk forward with the other one; are we able to walk forward with this one too? Can anybody not walk forward with this?

Milton Mueller: Well I can't tell whether is "necessary"…

David Plumb: It's not there.

((Crosstalk))

David Plumb: Then we don't have it. We don't have it then. So let's go back to the way it was and…

James Bladel: Can I make a…

((Crosstalk))

David Plumb: Microphones, please.

Stephanie Perrin: How can you ignore legal counsel's advice and remove "where necessary" when that was part of the suggested phrasing?

David Plumb: Yes.

Stephanie Perrin: I mean, it's important. You can't just take somebody's word and take it out.

David Plumb: What I'm saying – okay, folks, I know exactly. Okay. These are very frustrating moments but we're going to work through them. I have high degree of confidence we're going to work through this. Okay, listen folks, let me just say what was happening.

((Crosstalk))

David Plumb: We were able to walk forward with it flipped around the original way. There was a suggestion to try flipping it this way and in the end that suggestion didn't allow us to walk forward. Okay, maybe some of us prefer it flipped but doesn't allow all of us to walk forward. I heard over here these folks were not ready to walk forward with that language of "where necessary." I don't know. Why don't you…

((Crosstalk))

David Plumb: No, I think we might need a break, folks, because I feel like we're in like a zone where we're a little frustrated.

((Crosstalk))

David Plumb: Yes.

Gina Bartlett: Okay, can we just hear – I think I know that folks are getting tired. For those who were uncomfortable with the top – with the change suggested, in response to one of the concerns we raised, is that – could someone just speak to the concern just so we understand it; one person. Was that what you were going to speak to, James?

David Plumb: The "where necessary."

Gina Bartlett: The "where necessary." Is there anyone who could speak to the concern on that just so we understand it? Mark, go ahead.

Mark Svancarek: Yes, by adding "where necessary" it puts us back into the situation where now we have to argue about what is necessary whereas before we did not have to have that argument and you could simply go to Rec 2 and look at the recommendation. Here it adds the uncertainty back in about what is necessary and what is not which is unnecessary since we have a recommendation that already addresses these things.

Gina Bartlett: So I think if you want consensus in the EPDP team, we go with the "contributing to the maintenance of the security…" with the footnote in the recommendation on Purpose 2. I think if you want consensus in this group that's where we end it.

David Plumb: And that's the place where we can walk forward. And we may not like it as our preferred option but we're able to walk forward with it as a team. And it means that you as a team are walking together.

Milton Mueller: Just before we start holding hands and walking together I want to make it clear that my support for that footnote was contingent upon the version of Purpose 2 that was suggested by the legal counsel. So why don't we take a vote about that footnote now, see how many holdouts there are on that.

David Plumb: Sure, go ahead Mark.

Mark Svancarek: So my question to legal counsel is, when you suggested the words "where necessary" was that simply a convenience and nice sounding word-smithing? Or when you said that, did you intend to make this distinction that we are now making? I mean, when you said "where necessary" was that simply a conjunction, a connection between the two clauses? Or did you mean explicitly to add that condition to the purpose?

Ruth Boardman: So when I made the point it was before the discussion about the footnote had taken place. So it was to respond to the concern that Stephanie had raised that there could be multiple requests, the example given was academic, which people might perfectly well want to respond to but which were nothing to do with ICANN's mission and therefore should not be potentially given preferential treatment by this provision.

So the inclusion of the language "where necessary" was intended to have a specific meaning because necessity does have a specific meaning under data protection law and it's intended to mean where it is – it has a concept of proportionality basically linked to the purpose so it was intentional.

Mark Svancarek: Thank you for clarifying.

David Plumb: Kavouss, and then, Chris, do you have your thing up as well? Okay. Kavouss, did you want to say something? And then Chris and then we really should – no it's not. Kavouss, please, I've asked, please.

Kavouss Arasteh: Yes, this is a very fundamental and important purpose. I strongly object to any qualifiers like "where necessary" – strongly object and I also object to the process. Somebody at the end saying that adding something; we have not asked any legal view on that. We have not asked. So I can live with both of them without "where necessary" but I prefer the low one, the contributing and so on – with a footnote to satisfy the intellectual property. I have no problem with the second one and the footnote but I have serious difficulty and objections with the first one in particular including "where necessary." That is very difficult. Who decide that it is necessary or it's not necessary? It is very, very vague expression. So I oppose to that strongly. Thank you.

David Plumb: Okay Chris.

Chris Disspain: Could I suggest that in the same way that bullet point 2 in what I think we've coalesced around is being our recommendation, which says, "What are the legitimate purposes for third parties to access registration data," that in the same way that the intellectual property people should take comfort from that being in the recommendation, Stephanie should also take comfort that that is in the recommendation is therefore likely to deal with her points about a suggestion that purpose – sorry, that access might come along for things that she doesn't think there should be access.

I think that that recommendation is drafted in a way that makes it very clear that we think we've got a lot of work to do when it comes to filling in all of the detail and it's a fool's errand to try and fill that detail in now in the purpose. So Purpose 2 as it was originally – which is the middle bit – seems to me to be the way forward. Thanks.

David Plumb: Okay. Who do we have? Hadia. Hadia and then…

((Crosstalk))

Hadia Elminiawi: Hadia Elminiawi for the record. So I would like to thank actually our legal counsel for the advice and I would ask you, so when asked why you put "where necessary" you said that this was in response to Stephanie's comment that this could actually refer to disclosures and not included in ICANN's mission like research for example.

However, this purpose without "where necessary" has two things. One it says lawful data disclosure and in the second it refers to ICANN's mission. So I don't understand how without having "where necessary" this could refer to disclosures not related to ICANN's mission when we have here the purpose

stating clearly "in accordance with ICANN's mission." How can we think that if we don't have "where necessary" the purpose could mean that we could disclose data for reasons not included in ICANN's mission?

So I think "where necessary" really adds nothing. The purpose as-is speaks about lawful data disclosure in accordance to ICANN's mission. So I would like to hear your legal advice in this regard.

David Plumb: Yes, Emily's next in line. Emily – and, yes.

Emily Taylor: A couple of things. Ruth, welcome to ICANN. Thank you very much for your…

((Crosstalk))

Emily Taylor: …contributions and your advice which are deeply respected and I believe personally given to try and help us along our way so…

((Crosstalk))

Emily Taylor: We've got on a practical issue, we've got 10 more minutes of Kristina being in this room. She has been holding the pen on Recommendation 7. Can I suggest that we take a short break from Purpose 2, focus on what I think I hope will be a fairly straightforward matter and we can put…

((Crosstalk))

Emily Taylor: Spoke too soon. But…

((Crosstalk))

Emily Taylor: …the other Ruth is here. But so could we just do that while we still have Kristina here and then return?

David Plumb: I totally support that and I would say – to just say we're not done here but let's look at Kristina – let's look at what we're doing with 7 right now and we are going to take a break after that. And during that break we're going to reconnoiter and figure out how we can find a pathway. We are tantalizing close, right, less than two words close to doing this. Yes, great.

((Crosstalk))

Gina Bartlett: And the attorney is coming at 4:00 so…

David Plumb: Right. So let's put a pause button to say we are tantalizingly close here, folks, while extremely frustrating that we actually haven't necessarily hit it, we are super-duper close. So right? So we're going to put a pause button. Gina and I will help think about how to make some progress on this. Kristina, do you want to walk us through, quickly before you have to go, where we were left off in terms of rewording Purpose 7, in particular the optional voluntary, all that stuff? And do you want to share something on the screen to do that?

Kristina Rosette: Yes let me – Marika, could you please change the screen?

David Plumb: So just – you can take my screen off.

Gina Bartlett: And go back to Marika on the Adobe Connect. And I might just remind you all in Purpose 7 we had confirmed it was an ICANN purpose, we had confirmed that the personal data does not have to be disclosed; those were two big concerns. We amended the language to "and incorporated in Registry

Agreements," and we were going to revisit the clunky kind of stumbling over optional and maybe voluntary. And Kristina took on the charge of getting us some language. So to you, Kristina.

Kristina Rosette: All right. So the first thing that I did – so what you see here is current Purpose 7, just the two bullets that set out the issues that I was asked to address, a proposed revised Purpose 7. What I had a proposed new recommendation but that I would be totally fine having as a footnote to Purpose 7.

So taking it in order, the very first thing I did was delete the word "optional" because I think it's important to keep the fact that it's a voluntary adoption by the registry operator so as between the two it seemed more appropriate to delete "optional."

I have added "and that are described or referenced in the Registry Agreement for that gTLD," because after having gone back through the relevant specifications to the Registry Agreement it's not technically accurate or complete to actually say that the registration policy eligibility criteria are incorporated – are actually incorporated into the Registry Agreement.

I understand that James has a friendly amendment that would delete "to confirm," and I would be fine with that. So before we go onto my recommendation/footnote, does anyone have questions?

James Bladel: Yes, I just want to point out that really it's delete "to confirm" or delete "validation to" or something. It's just clumsy; there's just too many words there so I just wanted to clarify it.

Gina Bartlett: Okay. Any other question for – Thomas, do you have your hand up as a question? Milton, question for Kristina?

Milton Mueller: Yes, what about the issue of – the relationship between this data and the RDDS or the public database?

Kristina Rosette: I mean, I think here's what I struggle with because there is no current requirement – well I should backup and say we need this independent of the RDDS issue because the temp spec is broad enough to cover gTLD registration data, which is very broadly defined in the temp spec. So currently it is up to the option of each registry operator if they want to include in the RDDS any additional Whois elements, ICANN and Trang, please keep me honest here, it's my understanding that ICANN has historically taken the position that the addition of new Whois or RDDS elements is considered a new registry service for which the registry operator is required to go through the registry services evaluation policy process.

So that I think has the potential to serve as a check. And I would also say that in retrospect if we don't have it in whatever recommendation it is, that lists the policies that we then have to go back or that have to be kind of cross-checked in light of this, we may want to add it.

Milton Mueller: Add what to what?

Kristina Rosette: Add the RSEP policy to the list of policies that require further review in light of our ultimate recommendations, the GDPR and the temp spec.

Milton Mueller: (Unintelligible) so what you're saying is that there's nothing requiring them to put this data in the Whois but some registry operators may do it and this would be an outcome of an RSEP process?

Kristina Rosette: Yes.

Milton Mueller: Okay. All right.

Gina Bartlett: Okay, Kristina, do you want to go to the recommendation?

Kristina Rosette: Sure. So the – what – the reason I have this additional recommendation again, I would be fine having it be a footnote to the purpose, is that by tying it back to the – that are described or referenced in the Registry Agreement for that gTLD, which was a request that was made in order to clarify that it's an ICANN purpose, I wanted – I think it's important that we avoid a potential negative inference, namely the potential negative inference that if it's not – if the registration policy eligibility criteria are not described or referenced in the Registry Agreement for that TLD, that the registry operator is then prevented from voluntarily adopting such criteria.

I'm not wedded to the specific language of this recommendation; I think it does what it needs to do. But again, recommendation/footnote, I don't really care but I think it's important that we put the marker down.

Gina Bartlett: Okay, I'm going to go to Farzaneh on the phone.

Farzaneh Badii: Hi. Farzaneh. So (unintelligible) I can't hear. All right, so I'm not going to comment (unintelligible) I just want to object to it because – and we have been repeatedly saying this through the registry and we never got a justified answer. They never go and refer us to a policy that would ask them to add these additional elements to the registration data directory and this is – they never – this is a case of expansion of Whois data elements, which I find it very – personally very, very risky and unsettling for the registrants – domain name registrants.

And because we are also like (unintelligible) disclosure policies and so the – I don't think that the registries have gone through – have pointed to any kind of policy or any kind of even like an ICANN Org direction that this – like RDDS has to include these elements. So I'm just going to object to that. I have nothing – I have no more power to do anything about it and yes, just that this purpose did not belong to this group; it was not within our mission to discuss this purpose and these data elements and I think it was just like procedurally wrong as well to bring it up here. Thank you.

Kristina Rosette: Can I respond to that?

((Crosstalk))

Gina Bartlett: Kristina and respond and then I've got Alan and Chris it looks like? No, not Chris. Okay, yes, go ahead, Kristina and then I'll go to Alan.

Kristina Rosette: Sure. Farzi, I'm not really – I think we're having – we're communicating past each other because what I am trying to make perfectly clear is that this purpose does not require – it does not require the inclusion of any additional data element in RDDS. It is intended to reflect the existing reality in the new gTLD ecosystem, namely that there are registry operators that have added to their contracts provisions that allow them to adopt specific gTLD registration policy eligibility criteria, for which it is necessary to validate against, again, given the broad definition of gTLD registration data, to validate against that data that the registered name holder for a particular domain name in a particular TLD does in fact meet the eligibility criteria. We are not talking about RDDS here; we're talking more broadly about gTLD registration data.

Gina Bartlett: Thanks, Kristina. Go ahead, Alan G.

Alan Greenberg: Thank you. I have a fair amount of knowledge of the kind of TLDs that Kristina is talking about, both the one where it is in the RDDS and ones where it is simply a contractual – voluntary contractual clause that they have put in. And I strongly support both of these items. Thank you.

Gina Bartlett: So can we check in on that? Is there anyone – and thank you, Kristina, for fitting this in by the way, for doing the language around things. Can we check in? Is there anyone that can't live with the revised Purpose 7 language? Any group actually. Is there any group that can't live with the revised Purpose 7 language?

((Crosstalk))

Gina Bartlett: You need to speak into the microphone, Milton.

Milton Mueller: Sorry. I'd say we are mixed on this question.

Gina Bartlett: Okay. Yes, move forward. And then anyone who can't live with the Recommendation 23 language or footnote – and if you have a preference on footnote versus recommendation language. Okay, so that's going to move forward and we will note that one member – well I don't know how we'd do that exactly…

((Crosstalk))

Gina Bartlett: At least one member of the Non Commercial Stakeholder Group did not support the proposed Purpose 7. Okay. We're going to take a break. We'll kind of regroup but we are expecting JJ at 4:00 to discuss the memo. It is 4:00 I know but we need to take a break.

David Plumb: We're going to take a break.

Gina Bartlett: Take a break. What do you guys want, 10-15 minutes until John gets here?

David Plumb: Let's take 15 minutes.

Gina Bartlett: Fifteen minute break. Terri, you can set up our clock. And thank you all for working so hard. And thank you, Kristina. And Kristina, safe travels.

((Crosstalk))

                                    END