

**ICANN
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Gina Bartlett So we're trying to get started. And if everyone could please look at Option 4 and 6 on the screen and please be reviewing that - got Marc yes. So let me say - well, Marika is going to explain this. Here's what we're going to do. So what we're going to do is we're going to call whether or not you can live with Number 4 and Marika will explain it. If you can't we're going to outline why for the initial report and then we're going to call whether not you can live with Number 6 and we're going to outline why okay? So we're going to put both forward and here why people can't live with it and note it for the initial report.

Now Marika is going to outline, she put some - there is some language in there on Number 4 so go ahead Marika you want to outline these?

Marika Konings: Yes thanks (Gina). So this is Marika. So what you see on for the initial part is what you already saw before the break, the language as (James) suggested we did move up the question that was part of the original two I think it's our understanding from the conversation was that a similar question would be

after the initial report regarding, you know, is this language sufficiently specific and if not how do you propose to modify it? And then staff has added some language or in brackets that wouldn't be part of the purpose itself but more of an explanatory note and a thing that addresses some other thing the concerns that (Martin) tried to be more specific about what is meant or when that policy development would actually take place.

And our understanding is that that conversation would happen as part of the discussion on for standardized access. It's a non-public registration data as is outlined in the charter and that part of that discussion that would be further details developed in relation to, you know, what is meant around third-party (unintelligible) interest regarding abuse or intellectual property. So again that's a note that would kind of be added as an explanatory note, not part of the purpose itself but hopefully then would provide the kind of detail that I think some thought was maybe lacking.

Gina Bartlett Okay. So on Item 4, maintain the security, stability and resiliency of the domain name system and coordinate policy development regarding lawful access to data already collected for legitimate third-party interest regarding abuse or intellectual property protections with the other nodes underneath. Who cannot live with that and if you could please just state why for the initial report? Thanks Marc. Go ahead.

Marc Anderson: This is Marc Anderson sorry - I'm sorry but we're off-track. These are - what we're supposed to be doing is discussing purposes for processing, you know, personalize the, you know, information on the data subject right? You don't process the data to develop and coordinate policy in the system for standardized access right? You know, we're off-track all right? I mean this, you know, I wouldn't even be comfortable putting my name next to this. This isn't a purpose for processing data we've just sort of lost our direction here a little bit.

Gina Bartlett Okay Amr?

Amr Elsadr: Yes Amr from the NCSG. I agree with Marc and would add that, you know, it makes sense that we would need to develop a policy at a later time regarding access but yes it should not be part of this purpose.

Gina Bartlett Number 4?

Amr Elsadr: Yes Number 4.

Gina Bartlett Okay.

Amr Elsadr: And also I think we need to remove the abuse or intellectual property protections issues from the section...

Gina Bartlett Okay.

Amr Elsadr: ...as well.

Gina Bartlett Thanks Amr. (Diane) why you can't live with Number 4?

Diane Plaut: The question that I had is really very similar to Marc's is that I feel that we're off-track here because - and it's really just gone in a circle and it's only through good intentions that everybody's making the efforts. But ultimately if you think about it, you know, 6 isn't a purpose because a purpose isn't developing policy within the CPG.

Gina Bartlett Talking about Number 4?

Diane Plaut: Yes that's what we're doing. So 4 is not even why do we have to coordinate policy development regarding intellectual property protections and legitimate third-party interest when the bottom line is, is what the that the temp spec says, what ICANN bylaws says and what we're supposed to do here is, what ICANN is doing right now is or pre-GDPR is that it facilitated a system to

provide for the access to Whois information. So now post GDPR we know that the system can exist in the same manner anymore. So right now what we're doing is word - we should have a purpose that simply says exactly which was in the scope of the temporary spec is to enable the lawful access by legitimate interests of third parties right?

And basically that's what ICANN is going to do within a UAM. They're going to enable access lawful access to legitimate interests of third parties. And you know what the UAM is going to provide what is lawful and what is legitimate and that is going to come later. So the purpose of ICANN right now in line with its bylaws and to enable that access in relation to that access model which is going to come later in line with the temporary spec to have as a purpose to coordination of policy development regarding lawful access is what we're doing here. So we don't need that within the purpose. And so even though it was well intentioned, it's not getting us anywhere.

Gina Bartlett Thank you (Diane). Alan and then Chris, and then Kavouss.

Alan Greenberg: Thank you. Without repeating too much of what was already said we need to have policy to do this. I do not believe the development of policy is at all related to a purpose. So that I have significant problem. We have had people express concern with intellectual property as too wide a term since it includes copyright and a whole bunch of other things. Since ICANN is only - has traditionally only been related to trademark protections why don't we restrict it and therefore not open - not allow people to raise concerns?

And one comment not on Number 4 but on what (Diane) said we should not be conflating a universal access model with setting rules. We could end up having rules that have nothing to do with the universal access model but be implemented in completely different ways. So I think we should not conflate the two. I mean not - I support a universal access model but let's be careful of our use of terminology.

Gina Bartlett (Chris)?

Chris Disspain: Thank you. I am not talking to whether I could live with this or not. That's not my job but I do want to say however before I start talking about Number 4 that I really liked number two before when it was up there before. I thought that did the job. So I'm confused by both 4 and 6 specifically in this desire to mention policy development. I - it was just supposed to be ICANN purpose. ICANN's purpose is not to develop policy. ICANN develops policy in order to do its mission.

And so suggesting that ICANN has a purpose of developing policies is not correct. It develops policy so that it can fulfill its mission. And it's listed in this mission as one of the ways it does that. And access, the collection of and access to relevant data is in the mission. So I'm not - I'm really confused as to why we keep cheating this back to policy development. I just don't understand it.

I do understand the reluctance of people to call out at this stage specific reasons why you might need access to the data. And I'm not entirely certain that it's the job of this particular bit to do that which is why the old two worked for me because it doesn't do that. It just makes it clear that that's going to happen. So I'm - those are all my comments. I'm just trying to be helpful. I hope it helps. Thanks.

Gina Bartlett Kavouss?

Kavouss Arasteh: Yes I'm sorry (Gina) I don't all many times I have to repeat how many times? We push them from the door they come from the window. We push them from the window they come from, the roof. (Gina), distinguish colleagues, you could not subject the availability of access to the policy development. This is the important issue in addition to what (Chris) mentioned. That is another issue. But what you are saying that this access would be available once the policy is developed.

This is put in an upcycle to the access. A big offset and would not be in line in the GDPR. Those people who put this off cycle they are responsible, responsible to the community. You should not turn around. This is our (unintelligible) and that is a (unintelligible) but not turning around ten times. I cannot agree with anything starting development of the policy for access.

I could say that we'll facilitate the access which may involve or may include, may policy development as appropriate or where applicable. That is the maximum concession that I have made in order to satisfy those parties pushing for the policy development. Otherwise I was in opposition from the very beginning of any reference to that. But since we are not pushing for our own point we want to have some agreement please kindly, (Gina), put also the version that I provided to you which number that was on the board that people they see.

In no way we agreed to defer to the policy development at the beginning, the access subject to that policy development. This is totally unacceptable. It is not in line with the work that we are doing, please kindly. You can have ten more options but that does not get out of this dilemma.

Gina Bartlett Thank you.

Kavouss Arasteh: Thank you.

Gina Bartlett So folks now it's time for my intervention. I don't know how you solve this puzzle. We have gone round and round with this. If we focus on maintaining the SSR then IP folks they're like it's not included. When we attempt to add it in when we get too specific on the list it's red flags, and we hear that, it causes problems. So the idea of integrating in the coordinating policy was a way to preserve or ensure that those intellectual property issues would be dealt with and managed after we get through the initial report as part of - once we finish the gating questions.

So, you know, I'm just sensitive that it's like 1:30. We've gone round and round. I - the queue is back up. I totally know. I know Stephanie' probably going to say that this is the reason we're having a problem is because this shouldn't be a purpose. I'm just really not sure how to be helpful here and what to do. I just don't see a bridge. Unless you separate into two purposes, I'm not sure of the bridge here. Stephanie go ahead and (Thomas). Okay.

Stephanie Perrin: Stephanie Perrin for the record. I really think it might be helpful if instead of offering language that in their view allows the activities to be covered as a ICANN purpose, the intellectual property constituency laid out exactly what kind of access they need and want to, what data elements when and why because then we could identify that those processing activities which are done as a third-party request could be well accommodated. I think the initial problem was that the IPC decided upon reading the GDPR that there was a significant risk that if accommodating them -- I'm just using that loose collection of words to cover everything -- if that wasn't a purpose of ICANN processing that they would have their data access cut off.

And I think that's a legitimate risk and a legitimate fear. But we keep dancing around in circles coming up with language that they think is broad enough that covers everything and yet specific enough to include their terminology that is going to drive NCSG enough particularly because this isn't an ICANN purpose in the first place in our view. But I understand that fundamental legal uncertainty as to whether that particular processing activity needs to be pre-stated by ICANN. Let's talk about that and it'd be real helpful if we had legal counsel to help us. Thanks.

Gina Bartlett Thanks Stephanie. We're going to go to (Thomas) online and then I'll pick up with the queue here again.

Thomas Rickert: Thanks very much. And I guess we are getting back to this issue because nobody really knows what's behind those access requests at the end of the

day. And if we can't agree on language specifying this now I guess what we could probably use as a bridge is a path forward on how we get that language at a later point. So can't we find language to establish that the collection of data as required to fulfill lawful disclosure requests that will be established during our further work, you know, then I guess that might do the trick. So we will keep, you know, by doing so we will keep it sufficiently open so that a disclosure request for IP and for some purposes for example are not off the table but we keep the language somewhat loose and just say that we will match whatever comes out of the excess debate with language for the collection part of it.

Marika Konings: So this is Marika. And to your question of bridging the gap. I'm just wondering because I think and the most seem to agree that, you know, two is a, you know, acceptable purpose maybe with caveat but cannot associate a policy recommendation then factor in this aspect of, you know, what I think now is Recommendation 6? And now and I think it goes to Alan's point earlier not to confuse, you know, what is a GDPR purpose capital to me and what is an objective or a desire of the group to pursue?

So I'm wondering if that is a way to kind of bridge what we need to have here as a very specific purpose but at the same time making sure that, you know, it's not forgotten that, you know, policy needs to be developed to consider that other part that, you know, several have expressed concern about and everyone I think is recognizing the importance of. So I don't know if that is a way of addressing the two camps and having that both in the report but making clear distinguishing clearly between the GDPR purpose and objective or desire of the group.

Gina Bartlett So Number 2 would be the purpose and it would be noted in the initial report that the policy would need to be developed to address these specific legitimate interests including intellectual property. Okay I'm going to go to (Margie). I'll get my - I've got a queue. Okay let me do the queue. Go ahead (Margie) why don't you start and I'll do a queue. And try to (unintelligible).

((Crosstalk))

Milton Mueller: (Gina) can I just ask - can I ask you to be precise when you say intellectual property and say trademark?

Margie Milam: No and this is (Margie). I'm in the queue anyway so I'll read to you what I was going to say which addresses (Milton)'s point. If you recall the European Commission wrote a letter to ICANN in January of this year where they talked about the Whois system and then I'll read for it - from it. But essentially it talks about being in the public interest access to Whois for things like cyber security and the stability of the Internet, preventing and fighting crime, protecting intellectual property and copyright or enforcing consumer protection measures. And that's from the European Commission itself. And so I think that the issue we're having is that it's not just trademark. It's broader than that.

So it's not inconsistent with ICANN's mission to have access for those principles though. I think that's where you and I are disagreeing (Milton). You think that because the mission is written in a certain way that you can't have Whois access for this for the things I just read from. And that's I think where we disagree.

Gina Bartlett And (Margie) I'm sorry if I just missed this, but what are your thoughts about the proposal that Marika sort of outlined based on what she was hearing, which is Number 2 with the notation that the policy would be developed within the EPDP period? Do you have any thoughts about that before I move on through the queue?

Margie Milam: Yes. We're going to address it in this EPDP, the intellectual property purposes and I think it's fine. I mean I think that works.

Gina Bartlett Thank you (Margie). Okay I've got Alan G., Alan W., (Ashley), (Alex), (Emily), (Mark S.), Marc A., Farzaneh. Alan G. passed. Alan W. and Kristina sorry.

Woman: Thank you.

Alan Woods: So Alan Woods for the record. Again this is the way these things go that I - my original point has probably been made but I just wanted to kind of maybe help people to consider these as purposes by just putting in a little bit of a placeholder in front of not actually on the paper but just generally. When you're reading these things can you just put in at the beginning use of registrant data too? And when you look at 4 and you look at 6 and you look at one and you look at three all of them make no sense when you do that.

The only one that actually does make sense there is 2, but use of registrar data to maintain the security and stability and resiliency of the domain name system through the enabling lawful access for legitimate third-party interest to data identified here and that is already collected. The rest makes no sense. And that's going to the policy point as well. You don't use registrant data to create policy. And this is something that Alan and other Alan said like hours ago and I completely agreed with them. So...

Gina Bartlett Thank you. So I'd really like to call Number 2 and say who can't live with it with the addition of the policy piece. I have about ten people in the queue. Are people comfortable with me going to calling Number 2 and registering who can't live with it? Yes, okay. So Number 2 is maintaining the security, stability and resiliency of the domain name system through the enabling of lawful access for legitimate third-party interests to data identified here in that is already collected. And it would involve, in the report, a commitment to develop the policy tied to the other interest that's outlined kind of in the parens above that would happen during this EPDP, not later. So if you cannot live with that can I please hear from you and please briefly state why? Alan G.

Alan Greenberg: I'm not saying I can't live with it. I want a clarification. We are using the term data already collected. We are also having a parallel discussion on whether we should have a new field for legal versus natural people. On the assumption the data already collected does not preclude adding that new field and therefore using it I have no problem this.

Gina Bartlett Staff, we talked about that yesterday in the staff meeting that once you finish up all the other purposes and the data elements that there would be a need to reconcile the data already collected with what you decide on the other purposes and then you would be able to look at that again. So I think it - the data already collected would need to be updated to reflect your further agreements okay?

So once again I'm doing Number 2. And if you can't live with it with a commitment to developing a policy if you can't live with that we want to hear why. Kavouss?

Kavouss Arasteh: Thank you. Apart from the suggestions or clarification said by Alan Greenberg I have no problem with Number 2 madam. (Gina) we have spent more than sufficient time to these three or four lines. We should be efficient. We should be productive. Twenty-nine experts around this table they are discussing three meeting, four meeting coming here, a lot of cost, a lot of thing for the staff. We have to move forward.

Gina Bartlett That's what we're...

Kavouss Arasteh: We have to move forward. There's no way that somebody object for everything chairman. We are flexible and we agree with Number 2. Please call those people who cannot live with Number 2 remains as minorities and then go ahead and proceed as appropriate. Thank you.

Gina Bartlett That's exactly what I'm in the middle of doing Kavouss. So I am only calling on if you do not - if you cannot live with Number 2 with the commitment to

developing the policy. So I'm going around with this (tags), Marc A.
(unintelligible)?

Marc Anderson: Marc Anderson. I - so I guess with this one in my view this does not include IPC interests like as this is written, right? So I mean I guess I'd like to hear from the IPC...

Gina Bartlett I'm going...

Marc Anderson: ...before I can answer this.

Gina Bartlett Okay I'm going to (Diane) was next. Go ahead (Diane)?

Diane Plaut: Pardon me.

Gina Bartlett And could you please speak to the mic?

Diane Plaut: Pardon me. That is our concern Marc thank you. That is a concern that the security stability and resiliency of the DNS has been clearly identified by a number of parties here is not including IPC interests. So I think that that's the issue that remains. And then the other thing that I would know it is just from an annoying lawyer standpoint is that data identified here and that is already collected is -doesn't make any sense because that means that it would be data that was already collected in the past, not going forward. So it should really and just to clarify on your issue it should just be data as collect - as collected herein and then that's it. It resolves the issue of whatever data elements we land on.

Gina Bartlett Thank you for that friendly amendment.

Marc Anderson: Thank you. So with that can we like the original CPH proposal, the green one, if you could scroll down to that one I think it's still on this page just further down.

Man: (Unintelligible).

Marc Anderson: Right.

Man: I have a suggestion for a change which might help intellectual property if we could go back to whatever it's called now. If you say maintaining stability, security and resiliency of the DNS in accordance with ICANN's mission and you not that NXG and G2 specifically contemplate disputes about registration then you solve that issue I would've thought.

Gina Bartlett So...

Diane Plaut: Amazingly enough that's the language that we had in the first week.

Man: So I apologize for my absence in that session but I mean just dealing specifically with that issue I would have thought that would deal with it.

Gina Bartlett So...

Diane Plaut: Yes that's...

Gina Bartlett ...does that help (Diane)?

Diane Plaut: ...what we had in the very first week. So yes that does help. And the issue is, is that whether the only issue is, is that whether people believe that really IP interests are covered within the ICANN's bylaws and mission but it certainly gets us a better - in a better place than it presently stands if anyone else wants to comment.

Gina Bartlett I had (Mark S.) next. (Ashley) did you just put your card down?

(Ashley): I'm just not really sure where we are in terms of the queue. Are we still just noting our objections or are we trying to improve too?

Gina Bartlett I thought we were just observing our objections. Why don't we hear from (Mark S.) and then I'll check in? I think Marika is putting refined language up. Go ahead (Mark S.).

(Mark S.) Yes I'm just waiting for the language to go back up.

Gina Bartlett Maintaining the security, stability and resiliency of the domain name system in accordance with ICANN's mission through the enabling of lawful access for legitimate third-party interest to data identified. It still says that but I think (Diane)...

Man: What number is this?

Gina Bartlett ...herein yes but yes...

Man: (Unintelligible).

Gina Bartlett ...can you say it? We can fix the data part. The to date identified herein that is already collected. We can clean up that language. But the goal here is to capture the interest of IP through in accordance with ICANN's mission and then this would also involve the policy development process within the EPDP. So if there's - if you can't live with this language I'd like to hear from you. Kavouss cannot live with this language and (Diane) cannot live with this language?

Kavouss Arasteh: Yes I agree with this language.

Gina Bartlett Oh you agree okay.

Kavouss Arasteh: I agree with language provided that we go forward.

Gina Bartlett Okay.

Kavouss Arasteh: But not to add again because this is not necessarily to say...

Gina Bartlett Okay thank you...

((Crosstalk))

Gina Bartlett ...Kavouss. Let us...

Kavouss Arasteh: It is quite clear but I agree with that. Thank you.

Gina Bartlett Okay. So (Diane) you don't - you can't live with this language?

Diane Plaut: The only thing I'm wondering is it's the maintenance of the security, stability and resiliency of the DNS, the maintenance of the security stability and resiliency of the DNS in accordance with ICANN mission is really just about the maintenance of security, stability and resiliency. The mission part doesn't necessarily address the IP issues because it's just talking about the maintenance of SSR within the mission. So I mean it's, you know, it's certainly getting us to a better place but if we go down - if we could go down to the green one again...

(Kurt): Well before we do that (Diane) I - let me - I'm sorry for interjecting. I want - this is (Kurt) I want to point out it does that through the enabling of lawful access. So I agree with your point if it ended at that maintenance but it does it through the enabling of lawful access so that's why I think it gets us home and...

Diane Plaut: That's a good point (Kurt). I mean I think that it's probably the best compromise that we're, you know, at, at this juncture. If anybody else wants to weigh in they're more than welcome to.

Gina Bartlett So Kristina you can't live with this? Would you like to say why? Oh...

Man: You know, it's (unintelligible).

Diane Plaut: I had an entirely different comment.

Gina Bartlett Okay so I think with that (Diane) your card's down. Oh my God I'm not going to hold my breath but so is there anyone who can't live with Item 2 recognizing there will be policy development within the EPDP to further drill down on the IP issues? Is there anyone who can't live with it? Okay thank you all. Thank you all for being flexible and problem solving. I - let's just have a moment, turn to the person next to you and appreciate them for thank - I'm serious, appreciate each other for problem solving and being creative. Don't look at me like that (Matt). Thank somebody next to you. Yes.

Man: (Unintelligible).

Gina Bartlett Okay. Oh and yes (Milton) (unintelligible).

((Crosstalk))

Milton Mueller: A quick point. We are going to be very concerned about how you modified this language about data identified herein. That could kill it for us so be careful.

Woman: Can I actually speak to that because I wanted to answer (Diane)'s concern? So this was that data identified herein that is already collected was - we kind of tweaked the order of that in order to make it clear that the data identified herein that is already collected is the registration data that is being collected underneath the other Capital P purposes. Mic?

Gina Bartlett Please say your name and speak into the mic.

Diane Plaut: Yes (Diane) (unintelligible). If we just ended it at herein wouldn't that solve it too because the data collected herein and we're going to finalize on what data elements are going to be collected? Can't we just end it at herein?

Gina Bartlett (Chris) has a suggestion.

Chris Disspain: Well, I'm just wondering if it really does any harm does it matter? I mean if there's some people are comfortable, if (Milton)'s comfortable happily leaving in that is already collected then that's fine.

Woman: It makes sense.

Milton Mueller: Does it do any harm? It may not necessarily appeal to the legal drafting minds around the table...

Woman: No but it doesn't make any sense because it's already collected, already collected when? I don't see data collected herein why (unintelligible).

Milton Mueller: So it would be more accurate to say data collected from the other purposes that are specified herein.

Gina Bartlett Okay.

Milton Mueller: That's fine.

Gina Bartlett Does that work?

Milton Mueller: That's fine.

Gina Bartlett Everybody like that?

Milton Mueller: That's fine.

Gina Bartlett Okay with the data collected from other purposes herein. Kavouss liked that as well. And...

Woman: No (unintelligible).

Gina Bartlett Oh I'm sorry Kavouss. Go ahead I thought - yes please go and then we're going to move to purpose A. Get ready.

Kavouss Arasteh: I understand we have agreed with Number 2. (Gina) we are not drafting Chapter 7 of the United Nation charter.

Man: Yes we are. Yes we are.

Kavouss Arasteh: We are not doing that. We are doing a simple text that should be implemented and look at the implementation. I think you putting thrill to some small things so on so forth. Please be quite...

Gina Bartlett Thank you Kavouss.

Kavouss Arasteh: ...practical pragmatic and don't push too much I think. I think the text Number 2 is sufficiently covering every point and we don't come back to that again. Thank you.

Gina Bartlett Thank you Kavouss. I think we've solved that. Okay we are going to go to UN Article 5 there's -we are going to go to Purpose A and Purpose A we just passed it out in case anyone needs it in the new format. So there's a few things we want to do in Purpose A. We want to check the language of the purpose. And I'm going to pass that to Berry.

Berry Cobb: So Berry Cobb for the record. So as she said that Purpose A is being sent around now the hard copy. Again note that all of the track changes have been approved with what you're reading right now. I do recommend that you go to

the wiki page and there's a redline version and look at the soft copy on your PC while we're having this discussion.

Gina Bartlett Hey so what I'm going to do before I open it up I'm just going to flag for you the things that merit group discussion that we've identified all right? So part - the first thing we want to check in on is the language. The language was modified and the red line is online. The second thing that we want to check in on is under the lawfulness of processing test. We want to check in on the transmission, the legal basis.

We know that the 61F that we know some of you believe it's a 61B. So we want to note in the initial report who believes it's a 61B. And then we also need to check in on the disclosure element of the data processing. And then lastly I think we need to check in on the admin and tech bills but I need to check in over here with the staff. No, separate? Okay. Okay so sorry so we're going to start off with the check in on the language.

So is there someone who wants to introduce why the changes occurred or we just - yes go ahead. Okay we're going to hear from Caitlin on the purpose and then we'll open it up for conversation.

Caitlin Turbergen: Thanks (Gina). This is Caitlin Turbergen from icann.org. And just to give some description of what the update is that you see in the clean version, the last time the group discussed Purpose A - sorry I think we need to make it a little bit bigger Marika. The last time the group discussed Purpose A there was some confusion on what - when we say our registered name holder may exercise its rights what those rights include. And so a small group of people from the team flushed out what some of those rights are and that's what you see in the updated definition.

Gina Bartlett Great. (James), it looks like you're ready to kick us off on the purpose language.

James Bladel: Oh I'm ready to kick us off all right. So I missed the last call maybe.

((Crosstalk))

James Bladel: Wow this thing is...

Kristina Rosette: Can I give a brief history?

Woman: Yes.

Kristina Rosette: Okay.

James Bladel: Okay.

Kristina Rosette: So this originally started...

James Bladel: I want to put a market down though that...

Kristina Rosette: Okay. So this originally started as much broader bigger language. And in LA I think it was - we talked about what does this actually mean? And so then the discussion was establishing the rights of a registered name holder and dah, dah, dah. And then the decision was made which I agreed with that we needed to flush out what those rights were. And then the language from specifically to the end is what has been the subject of a number of iterations. But if your concern is establish the rights of the registered name holder that goes back to like August I think.

Gina Bartlett Thank you Kristina. Go ahead (James).

James Bladel: So whatever goodwill I may have built up in the last meeting I'm cashing in right now because I'm sorry is - this is - and I maybe emceeding this differently for the first time. I think in LA we did have rights but none of these rights are actual rights I think first of all. No, you don't have right to exclusive use. You

don't have the right to a beneficiary use of a domain name. You don't have the right to a transfer.

I get the idea that all of this is predicated by the applicable Ts and Cs imposed by the registrar but also there's a whole bunch of rights that don't appear here like intellectual property rights or perhaps property rights that might be applicable somewhere so I think the registries also might have some issues with a registrar and a registrant saying that they have the right to do something that might be in violation of their registries policies in there, okay or their domain name lifecycle for example.

So and then there could be all kinds of rights that aren't on here. But also I think we're treading on some dangerous ground by trying to incorporate rights into a consensus policy and by extension a contract. And then, you know, yes and then finally how is this a ICANN purpose? So I mean this thing just kind of has lots of different layers of (wrongitude) from where I'm looking at is like we're way off course. Now I understand that the purpose of ICANN would be to identify the responsible party that is, you know, behind a domain name and has exclusive use to that domain name under some conditions. And again and I'm...

Milton Mueller: (Unintelligible).

((Crosstalk))

James Bladel: Sorry (Milton). I'm going to go all the way back to the first thing I said is when we start to try to list things and put together shopping lists and get super specific that's when we go off the edge of the cliff. We need to go back to the generic high-level principled language because that's the kind of thing that we can put into a contract and then let, you know, the folks who write the contracts and resolve contract disputes figure that out because if we try and fix it here we're going nowhere. So soapbox over. Thank you.

Woman: Did you get it off your chest?

Man: So what we're going to do is put up the original temp spec language and then this slightly iterated language and then this so we have the frame of reference for what you were describing.

Gina Bartlett Okay. I've got (Milton), Alan W. and Kavouss.

Milton Mueller: Yes well (James) you did indeed succeed in burning all of your credit with me anyway.

James Bladel: I have zero credit with you (Milton).

Milton Mueller: So I guess I shouldn't be surprised that you wouldn't believe the registrants have any rights in a name. That's - it's rare to see registrars say that so openly. But let's get back to the original language of the purpose. It is the rights of a registered name holder in a registered name okay? It doesn't say anything about them being absolute and your fellow lawyer Kristina succeeded without any objection in putting into their subject to applicable terms and conditions hosted by the registrar and all of these other conditions.

But fundamentally we're trying to decide, and again let's go back to the axiom of Mark which is the purpose of these purposes is to decide what we're collecting data for right? So, you know, I think it's self-evident. I'm surprised we're even debating this that when you assign a domain name to somebody you're giving them a right of some sort. You're giving them a right to some kind of exclusivity, otherwise it wouldn't be a registration would it? You're giving them the right to use it otherwise they wouldn't be paying money for it would they?

You - domain names under GoDaddy are sold and exchanged and gifted all the time. They are renewed. They are restored. They are transferred to other registrars. I have transferred away from GoDaddy a couple of names that I

could mention. So why are you quibbling about this? I just don't get it. We our trying to establish what data do we need for these rights to be exercised. And, you know, forgive me if I'm standing up for the rights of the registrant here but it just we're trying to fix the Whois problem. We're trying to define a purpose for collecting data from the registrant. And we want to know what data we need for them to exercise these rights however they're conditioned by your contract. I don't see how we prevent you from conditioning them with the contract by saying subject to applicable terms and conditions.

Gina Bartlett Yes okay Alan W.?

Alan Woods: Thank you, Alan Woods for the record. I know I'm the person who keeps on causing trouble on this so apologies in advance. So number one I'd just like to say that, you know, Kristina was right and I apologize Kristina because I only came back very late with comments on this one. And I'm just going to pose a theory on this one is that we're focusing on perhaps the wrong, you know, element here. So the first thing I would say is this should be the basic easiest purpose for the processing of data within the ICANN sphere. It is dealing with the domain name and I think that's the problem. What we're doing here is where dealing with - we're putting the center person of being the registrant and not the actual domain name itself which the rights or benefits or whatever you want to call off is the registrant itself is a subset of, you know, the administration and the maintenance of the domain name itself.

So instead of looking at this as a one-sided purpose that is the purpose for the registrant it's we're looking at what data needs to be processed in order to effectively maintain that of the domain name itself and the lifecycle of the domain name and the transfer and everything. So I think we should use potentially the concept of, you know, the right (unintelligible) by contract of the registrant but as a subset of that which is required for the maintenance of and administration of a domain name being the core purpose.

And that is, you know, make the domain name work, make, you know, register the domain name, transfer the domain name and also hopefully dealing with it from a registry and a registrar point of view with AUP that we can in the maintenance and administration of a domain name apply the requirements of our AUP and process the data of the registrant for that purpose where necessary in a limited way, so again shift the focus to the actual commodity and not the person might solve it here. And I do have wording that I could share if people wanted to but I know that this is the path through which madness lies so apologies.

Gina Bartlett Alan do you mind if (James) replies briefly before I come to you? Is that okay? Go ahead.

James Bladel: Thank you Alan. I just add okay Alan W. Let's explore that. I think it might be better to I think what you're trying to say is like use and benefits of a domain name focus on the person or the entity essentially the use and benefits. I think my heartburn is around the word right.

Gina Bartlett Okay. I'm going to go to Alan and Kavouss that I have a proposal that maybe we take a caucus and you guys work through that but I'm under strict orders it can only be for 15 minutes. So I have Alan G. and then Kavouss.

Alan Greenberg: Thank you. Having spent two years in a PDP with (James) talking about rights I can understand his heartburn. But I find myself in the unique position of agree completely with (Milton). The words that have been added here are subject to the terms and conditions posted by the registrar, something with registrars can change at will without the approval of the registrant and subject to the terms and rules associated with the registry. I don't mind if we tweak it and change the focus, you know, as Alan W. has suggested but I really don't see a problem with this.

Gina Bartlett Kavouss?

Kavouss Arasteh: Yes (Gina), two procedural things. One may I request distinguished colleagues when they speak, speak into the microphone. The turnaround some 30 or 40 degrees and speak it is not understandable. Number two, why not you maintain the queue to the Adobe Connection? If I raised a hand...

Gina Bartlett Maybe I could explain that to you...

Kavouss Arasteh: No it is not because...

Gina Bartlett ...on the break. Can I...

Kavouss Arasteh: Three times you - now it's fine. Then you give, it doesn't matter no. Please can you if possible if it is not possible is not possible no. No coming to the issue. I am not in favor of maintaining subject to application terms and condition posted by the (unintelligible) because in the following sentence you said that applicable policies from registrar, registry and ICANN. Policies from registrar could include applicable terms and conditions. Why you have two times explain that? So I think one of them is sufficient.

So I suggest that it is subject to applicable terms and conditions posted by the registrar and saying that subject to applicable policies from registrar, registry and ICANN. Thank you.

Gina Bartlett Thanks Kavouss. (James) you wanted to get back in on that and then I see Amr and (Milton), (Milton) and then Amr.

James Bladel: Thanks. This is (James) and actually responding to Alan G. if rights are - can be invalidated, removed or negated by the registrar's terms of use and the registrar can change those terms of use or the registry, you know, essentially unilaterally without the approval of the registrant then they're not rights. And that's one of the reasons why if you look at the 2013 RAA I fought very vigorously to ensure that that document was called the registrar's - registrant's benefits and responsibilities document. So it already exists in the

ICANN (a sphere) this encapsulation of what you're benefits of having a domain name are and what your responsibilities as a domain name registrant are and that ICANN will under the RAA protect those benefits and enforce those responsibilities on service providers like registrars and registries. And so I just I feel like if we wanted to say this one could be very, very simple going back to I think Alan's point, Alan W. now shifting Alan's that this should be the simplest purpose in the world is identifying the party to whom ICANN is granting its benefit and responsibilities under the ICANN registrant's benefits and responsibilities statement from 2013, period done.

Gina Bartlett (Milton)?

Milton Mueller: Yes just first I want to address the issue, the more specific issue of should we be talking about the domain name rather than the registrant and their rights. And I think the answer to that is that if we're just talking about the domain name why are we collecting data about the registrant? Okay, apparently they have some kind of usage.

Now I think (James) made it clear in his last statement that he's simply allergic to the word rights and that there's no other substance to this because if you give me a contractual right which is what everybody in the world except (James) calls it to do X, Y, and Z and indeed under ICANN's regime there is no way you can stop me from changing a registrar who doesn't recognize any of my rights to another registrar who does so I would say that you do in fact have a right to transfer the domain and to exclusive use and benefit from its use. And if you don't offer those rights I suspect you're not going to be in business very long.

But fundamentally he wants to call them benefits. The rest of the world, most lawyers, most economists would call them rights. I don't understand if that's all we're debating here is whether we call it rights or benefits then I would just say let's go with rights because that's a word that most people understand and we've conditioned it appropriately in this statement here. So again the

key issue is what data do we need to collect to implement and actuate these rights, benefits and that's what we should be focusing on, not this semantic distinction.

Gina Bartlett Thank you (Milton). So I have Amr and then (Marc A.) and then maybe we'll check in where we're at.

Amr Elsadr: Thanks. This is Amr from the NCSG. I think (Milton) pretty much said most of what I wanted to. You know, these rights are granted because the domain name holder enters into a contract with the chosen registrar. I also wanted to point out that the benefits and responsibilities document does list these actually as rights but not only that but also indicates that, you know, that has - the registrant has a right to access accurate information on the registrars processes to make sure how to get all this done. So to me it's pretty clear that the document is called benefits and responsibilities but these are listed as registrant rights here. Thanks.

Gina Bartlett Marc A.

Marc Anderson: Thanks (Gina), Marc Anderson. You know, this I agree with Alan that this should be the most fundamental purpose that we're debating this is, you know, the domain name registration purpose so it's interesting that we're having so much trouble with this one. You know, but the language used in tempera specification is very curious here. Establish the rights of a registered name holder. I think why we've been sort of, you know, spinning our wheels on this one this is, you know, not the first time we've had this conversation is, you know, we don't really, you know, that's not a common understanding we have as a group. And it was just a sort of curious terminology to use her for this particular purpose in the temporary specification.

You know, in my mind when we're looking at this purpose what we're talking about is the allocation of a string to a registrant and the activation of that string in the DNS. You know, so for me, you know, the purpose that we're

talking about is the allocation of a string and the activation of that string in the DNS. And, you know, as far as a processing activity I'm not sure, you know, if the other words are really necessary or why those words were chosen. I don't know if (Dan) wants to weigh in on that if there's anything you can add. It looks like he's shaking his head no but, you know, for me I think, you know, these words are may be confusing and we can simplify this if we just talk about activation and allocation of a string.

Gina Bartlett (Margie)?

Margie Milam: With regard to the list I think we're missing whether we call it a right or whatever the right to update their contacts isn't - you know, in the Whois record. I think that's probably another one to add.

Gina Bartlett Alan G.

Alan Greenberg: Yes thank you. Yes as Amr pointed out although the title was changed the item of things are called rights. But to be honest I really don't care whether they're called a right or an ability to. The net effect is the same. And I don't want to die in a ditch over that particular word but if the intent is to change the intent of what it is saying, you know, I would certainly object to that. But I don't see the harm of whether it's called a right or not especially since in our own documents we do call it a right. Thank you.

Gina Bartlett So (James) can I put you on the spot for a second? Does it affect your concerns if the word right is changed to something else or is it still present?

James Bladel: I'm sorry I didn't understand the question. Does it...

Gina Bartlett Well...

James Bladel: ...do I prefer that the word right would be replaced with something else then yes.

Gina Bartlett Yes.

James Bladel: I also would prefer that rather than enumerate them here that we would instead reference the 2013 list of registrants, benefits and responsibilities. And then I also think that we need to include the word identify in here somewhere because to Alan W.'s point the very first thing we're supposed to ask ourselves is we're collecting the data in this case not to establish the rights but to identify the rights or the beneficial holder of these benefits because - and I'm stumbling here a little bit but we're identifying the person who has these benefits with the domain name, not the benefits themselves. So it feels like there's a couple of changes that need to - and I'm going to stop talking because Kristina is ready to straight up murder me.

Gina Bartlett Yes Stephanie?

Stephanie Perrin: Yes Stephanie Perrin for the record. I think if you're citing ICANN's purposes while I understand ad impulse to cross reference to another document and just say go look at the rights and responsibilities paper A, the rights and responsibilities paper is much broader and needs to be updated to be in compliance with GDPR and B, that's not a good way to state a legal purpose for data processing. The five elements that have pulled out, that we've pulled out here are the actual things that you get when you register a domain name and they are rights. I mean if I put \$2 into a parking meter back home I have the right to park my car there. It's a right. It doesn't mean it's going to be honored and if they tow my car away that I have to go to court to fight over my right but I bought the right for two bucks.

And that's what's happening here. You are negotiating with a registrar to have the following rights. And I think this is kind of important to see here whereas tossing them over to the 2013 RA I don't think that's going to provide the clarity. And as Marc said rather eloquently earlier this is the main purpose

for ICANN to be gathering registrant data. So it's important we get this right no pun intended.

Gina Bartlett (Haudia), Kristina, Kavouss, Alan G., (Milton). That's my list. Mistakes, (Matt)?

(Haudia Minyowi): (Haudia Minyowi) for the record. So I was wondering if among those rights are the establishing the right to the registered domain name trademark and if this already falls under one or it needs to be explicitly mentioned? And if it's already, if it's already included under one then this we were talking a lot of intellectual property rights in relation to trademark for ICANN purposes. And if - this is actually included under one because certainly establishing the right to a registered domain name trademark is a right that it's an ICANN purpose as well. It's just a thought. But anyway I don't know if we need to include it here. I don't know if I'm clear or...

((Crosstalk))

Gina Bartlett I think I was processing it, sorry.

(Haudia Minyowi): Okay.

Gina Bartlett Thank you. Kristina?

Kristina Rosette: Kristina Rosette for the transcript and no I'm not going to kill (James) although I'm a little cross. A couple of things, I - if I did at one point when we were discussing this purpose in a call mention the registrant benefit responsibility document or whatever it's called. After having given that a lot of thought in addition to the reasons that Stephanie raised about why we shouldn't just incorporate by reference to the best of my knowledge it's not a consensus policy which means that it could basically be changed at will without any input from any of us so I don't think that's particularly good idea.

What I would suggest that we do in the interest of trying to continue to move us forward in a somewhat efficient manner is if there - I would just suggest that if there's anyone else who has a strong view of about purpose A and that view has not yet been articulated by someone else and then I think from the sounds of it the CPH folks are going to need to go back and take another look at this and someone else is going to hope (unintelligible).

Gina Bartlett So I'm going to go to Kavouss and then I'm wondering if maybe we just do like a ten minute break and you all can caucus? Okay so Kavouss we're going to go to you and then we're going to do a 10 minute break so that group can caucus.

Kavouss Arasteh: Yes since I wanted to mention that the term ability is not interchangeable with rights, from legal point of view rights not only belong to the individual but also belong as an obligation to the others where the ability is limited to the person in question somebody's able to talk or is not able to talk. But right of talk or right of reply that means others should respect that so we could not interchange rights with ability. Thank you.

Gina Bartlett Thanks Kavouss. So we're going to invite the registrars and registries to caucus. I think what's been proposed in addition to we've heard, you know, the concerns that the proposal from Kavouss was to drop the subject to applicable terms and conditions posted by the registrar. And then we also heard an amendment to have a Number 6 which was the right to update contacts. And then I think we've heard a number of people tension that referencing the other benefits document because it's not approved and it's subject to change that there may be a strong preference for keeping the rights listed here. So those are just some cliff notes of what's been discussed.

I've been asked to keep it to ten minutes so I'm going to put my timer on for ten minutes and I'll come find you all and see if that does it okay? So ten minute break or caucusing on this and then we'll come back together. Thank you all.

END