

**ICANN
Transcription
EPDP on the Temporary Specification for gTLD Registration Data
F2F Meeting - Day 2
Thursday, 17 January 2019 at 15:15 UTC**

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Coordinator: Recordings have started.

(Kurt): I think we're going to run this probably right after lunch or something. We'll see where this - yes.

Gina Bartlett: Thanks. So for those who were interested in having the legal counsel to come into address the memo from (JJ) come in, he's available at 4 and so we'll try to have a break before that so everybody can have a little fresh air and we'll pick up the memo and maybe the recommendation 13 on the controller agreement at the same time. Okay?

(Kurt): Thanks. Great update. Okay. Hi, folks. Before we dive back into that conversation, before we dive back in, Gina, I just want to reflect for a second on some of the key points we were hearing, not all of them, just some of the key ones. All right?

Unfortunately we have a situation with our flipchart so you can't really see them so I'll just have to read them. We - I don't know if you all know. It would

cost \$1000 to take these two tables away so we decided against that particular use of ICANN resources, so. Yes. We apologize that the flipcharts are unreadable but we're saving ICANN a thousand bucks so we figured that's a fair trade.

Woman: That's a lot of wine.

(Kurt): That's a lot of wine. That's right. Okay. Great.

So we wanted to just highlight three key items that we heard, right, knowing that there's other, lots of other important details in that conversation as well. Three key ones though that are going to help us move towards consensus building, hopefully, is ,one, and this is straight from (Ruth), that indeed, access is possible without this purpose. (Ruth) said it very clearly. Third parties can request access using GDPR purposes or use GDPR legal umbrella and request. Okay?

We know that's a fact. Okay? Where there is a difference of opinion in this room is whether a purpose like this one is needed in order for ICANN to develop and implement a more standardized access model, right? So we've heard two strong opinions on that, at least two, that we can't move forward and implement this standardized access model unless we flag this is a purpose for processing data. Right?

And another opinion saying, "What are you talking about? Of course you can move forward with your access conversation even if you don't have this as a purpose." Okay? So that's a difference of opinion and (Ruth) begged off on creating a way in on that particular debate right now. She may later but right now she didn't weigh into that. Okay?

And the third point that was really important amongst everybody was that you all did want to talk about a standardized access model in phase two. You want to get there. Okay? So among the many things that were said and the important points that were made about, you know, the wording of purpose two as it is right now and other things like that, these three things give us some vision about where we may be going here.

And I want to say that on day two of our last in-person meeting before the final report we are kind of at the end of the road about convincing each other that our particular viewpoints are the right ones. Okay? So when we have a difference of opinion in the room, we kind of are out of space for us as a group to keep trying to persuade each other to see it the way we see it. Okay?

You see the implications of that? We may just have to move on as a group knowing we have differences of opinion. Okay? And we're going to have to find solutions that work and allow us to walk forward with those differences of opinion. All right? And the way you do that is by trying to really understand what's most important to you and what's most important to the other party in the room or the other party and solving for that. Okay?

So it would be a shame if we spend the next hour and a half, two hours trying to convince each other that, no, the way I see this is actually the right way to see it because I don't think we're going to get too much further. We can. We can persuade each other maybe a little bit but we're not going to get too far. So that's my little spiel about encouraging you to think about solving for problems perhaps as our pathway rather than convincing each other at this stage because we may be at the end of the rope on that. Okay?

So with Gina we talked about there's a couple potential pathways forward, given all this. Right? There's a pathway forward of just leaving it in there,

purpose two, right? That doesn't seem satisfactory given the public comments but maybe it's in there. We can all live with it. We don't like it but we can live with it.

There's the option of refining purpose two to address concerns - take on concerns such as what Kavouss has said about let's not subordinate the mission inside of this. Let's refine this. So maybe there's some refinement on purpose two that would actually try to address some of these concerns, right?

A third option, Hadia made reference to it, which was what if we included some other text in the final report that flagged what's really important to us, right? And then we need to figure out what is really important and what needs to go in that text, but it's going to be something along the lines of we believe that access is blah, blah, blah and it's fundamentally important and these are the folks that we already know who are going to be part of that conversation, et cetera, et cetera. Okay?

And a version of that that is potentially different or the same is that we take recommendation two and we beef it up, right, to get those messages in there and that will be a sufficient substitute for taking out principle - excuse me, purpose two. Right? It's worth noting that if you do that, if principle two goes away...

Woman: Purpose two.

(Kurt): Purpose two, excuse me. If purpose two goes away then there's those four original purposes that were in the temp spec that you all need to respond to in some way and say why these are all gone. Okay? So these are some of the thoughts that we had about pathways forward and I don't know if, Gina, if you were - if I've missed something. Okay. Great.

And so when we open up this conversation, I would love to open it up thinking about how we walk forward even in the face of our disagreements about key things such as do we need a purpose like this to make progress or to implement our standardized access model. Okay.

So I'm not sure where our queue was before. I see Kavouss. I see Chris. I see Marc. Gina, you want to help me with the order?

Gina Bartlett: Yes I think - why don't we go Kavouss and then Alan because their hands were up before break, I think, and then we'll come pick up Chris, Marc and Hadia. Okay?

(Kurt): Great. Thanks. If you can keep that queue, that will be great. Kavouss, you want to go ahead?

Kavouss Arasteh: Yes. You referred to three questions. I don't want to talk about question one nor question three. The question two is important whether access which is now discussed is or may be categorized as a purpose. This is for me the most important question that we have to reply. The question you may ask colleagues that does anyone have any problem, even though it may not be categorically put in as a purpose, does anyone have any problem to put it as a purpose?

Once this question is replied then you start to see what would be the draft or language which we would put at that purpose. Question one and three we don't reply. Question three is quite clear. Until the gating question is not answered, we can now go to the standardized model. That is quite clear. So if I may ask you to concentrate on question two and I think even though it may

not be 100% a purpose, does anyone have any problem to put it as a purpose?
If yes, then what is the language of that purpose? Thank you.

(Kurt): Let's just keep rolling here and then we'll come back. Yes, Alan?

Alan Greenberg: Thank you. I'd be one of the more fervent supporters of this purpose. I'm quite willing to ditch it as we have right now but I have a problem. Recommendation two says we will consider an access model, not commit to building one. There has been a lot of fears expressed that we will not be able to develop an acceptable access model which does imply a fair amount of automation unless ICANN can assume a significant amount of risk and responsibility.

This contract - some contracted parties are not likely to be willing to accept someone else making the decisions for them if they bear the risk of errors in those decisions. I find it hard to understand how ICANN can assume some level of risk -- and this goes back to the discussion of controllers, which we're not having at this moment -- without having a purpose directly associated with this application.

I understand we can develop a policy but can we really within GDPR assume some of the risk and liabilities of making the decisions unless we have a purpose associated with it? And it may well not be this purpose. It may be worded completely differently but that's the part that I have trouble putting together. Thank you.

(Kurt): Okay. Thanks, Alan. Who's next on our list? Sorry. Chris? Chris, you're up.

Chris Disspain: Thank you. I -- it's Chris Disspain -- I have some suggested alternative wording for this purpose which may help and it's put forward purely in the

spirit of trying to help. It isn't vetted quote, unquote or has no (unintelligible) at this stage. I'm going to put it in the chat room right now, if I can get the right screen open on my computer and I'll read it to you.

It says, "Having determined for a bottom-up, multi-stakeholder policy development process, the purposes for which is the means through which registration data is made available to third parties maintain the security, stability and resiliency of the DNS in accordance with ICANN's mission by implementing that policy."

So in other words it's a clear statement that anything - it's got to go through the policy development process. Now I have no doubt that won't be acceptable to some people but it changes the - it lists - in essence it lifts it up a little while still leaving a purpose in place, which I believe is necessary. But back to you guys now. Thanks.

(Kurt): Sure. Thanks, Chris. I just want to make sure I - so can you just say one more word about that? Sorry. One more word about what you're trying to achieve with that...

Chris Disspain: I'm trying to achieve a clear understanding in case anybody doesn't understand that this is all subject to the bottom-up policymaking process. Whilst it is the bylaws, it's done through a policymaking process. It's not done through some kind of ad hoc mechanism by which someone decides it would be a really clever idea to disburse this data to this person.

(Kurt): Great. So you've created that caveat at the front end saying this requires a bottom-up policymaking process to activate this.

Chris Disspain: Correct. Now you could argue -- and (Kristina)'s very quite rightly has put in the chat -- that we're in danger here of creating a purpose to create a purpose, and I accept that. It's - I don't for moment suggest that it's not clunky but I'm trying to find a way that we can come to some sort of understanding amongst those people who are prepared to counsel us on those things.

(Kurt): Wonderful. Okay. Great. Who's next? Mark, you're up.

Marc Anderson: Thank you. Marc Anderson for the transcript. I put in my card in sort of response to how you were characterizing our discussion. It's hard discussion. It's a hard topic but when we get out in the hallway and we talk, you know, I don't think we're having huge disagreements actually. You know, we're trying very hard to figure out how to come up with solutions on these. It's just a hard, meaty topic. Right?

And so I was really responding to your characterization about trying to convince each other, you know, that our way is right. You know, that's not what this is about I don't think. You know, we're not, you know, we're not arguing different ways. We're trying to find a solution to what really is a shared problem we're all here to solve. So my response is a little bit to how you're characterizing that.

And I think, you know, from my perspective when we were in Barcelona we came up with language a little bit by exhaustion and I don't think, you know, I think if we polled the table I don't think anybody would be particularly happy with that language that we have right now.

And then what you're hearing, you know, from Chris and others, you know, is that there's a spirit to work towards language that we can live with that gets us what we all need, you know. So, you know, I think, you know, how did

Milton put it, you know, there's a small step, you know, we need to take, you know. I think that's where we are. We're looking at trying to take steps that get us the language we need to get out of phase two - or get out of phase one and into phase two where we can start addressing these, you know.

And here, you know, I want to, you know, look to my colleagues down at the end of the table, you know, BC, IPC, ALAC a little bit, like what, you know, what language, you know, what are the things maybe the principles that you need to be able to take back to your constituencies, you know, just to, you know, to sort of check that box and get us to phase two?

You know, I think, you know, I think there's a couple things that came out in the public comments that are why we're tripping over the current language there as a purpose but I'd like to put you guys on the spot a little bit to hear a little bit about what is the language you need to have or what are the boxes that you need checked to get us to that phase two discussion.

Gina Bartlett: Thank you, Marc. Do one of you want to respond? If you take a minute, we'll go to Hadia. It looks like (Emily) put her card down. And then maybe we'll come over here for the response.

Hadia Elminiawi: Hadia Elminiawi for the record. So certainly I agree with what Alan said with regard to the risks and liabilities. And with regard to this purpose, I don't know how can we move forward and say, you know, let's delete it if we have ICANN Org saying without this purpose ICANN cannot get involved in the implementation of any sort of standardized at the system or model.

So if we're sure that this is the case that if we don't have this purpose ICANN will not be able to step in and be part of this access system, then I think we have no choice here. It's not a matter of opinion, it's a matter of fact. So if the

fact is ICANN cannot guarantee or, yes, or will not support a standardized access system without this purpose, then we have no choice. So thank you.

Gina Bartlett: So, (Emily), you're next in the thread. And could you respond to - I mean one of the things we were thinking on the break that would be helpful to hear directly from the registrars is we noted that the registrars in the comments and in this morning said, you know, you recommended to withdraw this purpose, so could you speak to I mean Hadia makes a point that ICANN is saying that they need the purpose to get to the policy. You may or may not agree with that but could you speak to why it needs to be pulled out and where? And it looks like James wants to get in there too. It would be helpful for us to hear in addition to what you were going to say.

(Emily): So first of all, thank you very much for the summary of where we're at and the options. I think this is very helpful. You know, we can all kind of stay here for the rest of the time trying to convince everybody else that we are correct, although we are correct of course, but, you know, it's not really going to be the best use of these rare opportunities of when we can all sit around the table together.

So I wanted to support the I thought very constructive suggestion that Marc made about, you know, can colleagues who really, really need and want this to be a purpose can we work around, you know, and I would also propose can we start to think about, well, can we look around recommendation two, strengthening that to getting it to where you need it to be.

But also I do want to acknowledge, you know, Chris has made several interventions this morning, which is very unusual as a board liaison, and I think to try to - I think this is to try to address your question, Gina. You know, from the point of view of registrars, collecting data in order to disclose it to

third parties to support the stability and security of the Internet is not really the reason why registrars are in business or are doing - or handling this data.

They're handling this data in order to make registrations to perhaps hope to provide value-add services and all of, you know, and establish a relationship with their customer, with our customers. This is why I think it's very helpful that Chris made the intervention that he did. We've been actually asking for several months now for ICANN's voice to be heard in this debate, particularly on this point, this very vexed question of lawful access.

I don't think - I don't hear around the table anybody saying there should be no lawful access to this data and I really don't think we can say this too many times. We're all - we all want to be able to do it but we want to do it lawfully. And the worry that the contracted parties, and particularly the registrars who are going to be the people most asked to disclose this data, is to be able to do this in a way that is really robust and stands up to legal scrutiny.

So I would really ask ICANN whether we can explore if it needs to be a purpose for ICANN then please let us try and work around that as we're getting language, making it very clear whose purpose it is. That places us into the position of processes or complying with a contractual obligation because it is a condition of our accreditation agreements or our registry agreements that we have to do this to fulfill ICANN's purpose.

You know, this I think is a fruitful area of exploration. We have been missing this from the debate and I hope that this comes at a point now where we can start to build on it constructively. We're deadlocked as a team. We need some other intervention to help us get home, and so that was really what I wanted to say on that. Thanks.

(Kurt): That's very helpful. James, why don't you weigh in on this? And I think part of this is exactly sort of what was just having with (Emily) is like let's really understand the pain we're trying to solve for in addition to legal arguments about it, but the pain really from a registry/registrar standpoint if this purpose is here as written.

James Bladel: So okay. Thanks. James speaking. And hard to be as eloquent or hard to follow someone that eloquent. And I'm also really bad at thanking people. That is part of my intervention. So let's just assume I did all of that, okay, and it was great. And thank you.

So, look, just (Emily)'s got it exactly right. To answer Hadia's question directly, our heartburn and the reason we want this removed is because it includes the elements of third parties. And if Chris' intervention and the materials he sent to the list establish this as an ICANN purpose, okay. I understand there's still some discussion about debate around that, but really from my perspective, maybe that's not universal registrar view, but from my perspective that kind of doesn't matter.

If it's an ICANN perspective of it's not an ICANN perspective, it's the third party bit that causes heartburn. So one proposal - and I think to hear out the other folks is that they want some certainty out of this process that the door is not going to be closed, that these things aren't going to be carved on stone tablets. We would like certainty as well. We're trying to nail ICANN's foot to the floor here so they can stop dancing around what they're going to do and what they're going to protect us from.

So we're trying to get some certainty as well. But I think maybe a way forward, if I'm oversimplifying here, would be to strip down the problematic part out of purpose to and shore up the uncertainty in recommendation two

and make recommendation two a little stronger and make purpose two a little more narrow and then maybe that's - that can light our way home. Thanks.

(Kurt): Great. Love it. Okay. Excellent. So I know there was a - I see some cards up. I know there was a request to those who are most - have the greatest interest in seeing something like purpose two in there to hear what it is you really want and whether that can be achieved through something like what James said or something like what (Emily) said. So I think if you guys want to gel on that, there certainly is an interest to hear in the room from that, and it's not just necessarily this side of the table. It could be other places around this table as well.

In the meantime let's circle back over here and I don't know who was first here but let me...

Gina Bartlett: Milton.

(Kurt): Milton then Marc.

Gina Bartlett: Marc and then Milton.

Marc Anderson: This is Marc Anderson for the transcript. I just wanted to add, you know, when we get to phase two, like I sort of assumed that we may have to change existing purposes or add new purposes when we get to phase two. But hearing the conversation around the table, I'm not sure everybody has that same assumption that I have. So, you know, that's just what I wanted to throw out here.

You know, not having it as a purpose now or not, you know, not defining it as a purpose for access to data, you know, does not shut the door in my view or

in my mind at least when we get to phase two. And certainly I, you know, that's a not insignificant conversation and we may find the need to revisit and modify some of the purposes that we developed in phase one. So I just wanted to throw that out there if that makes a difference at all.

(Kurt): Thanks, Marc. Milton?

Milton Mueller: Yes, just a quick addition. Milton Mueller here. You talked about us trying to relate to the pain of the registrars and registries and we certainly have taken that into account, but I think what's constantly overlooked here is the pain or potential pain of the data subject of the registered name holder. And so one of the reasons we object so strongly to purpose two is that it seems to create this blanket concept that ICANN is in the business of disclosing data about these registrants without any limitations.

Now one good thing about purpose two is that it said the data is already being collected but that's precisely why we don't need purpose two. The data is there. It's all about how it gets disclosed. So we're still of the mind that having this purpose is inherently dangerous to the privacy interest and that we're completely down with and willing to cooperate with, you know, reasonable, lawful disclosure methods. In fact we would like to work on that. And we don't buy the idea that you can't have a contractually imposed system of disclosure without this purpose. We just have not heard a serious argument for that proposition.

Gina Bartlett: So, Milton, can I just push back on you a little bit and have you respond more directly to the proposal we heard from Chris that ICANN does feel the need to have this - ICANN.org does feel the need to have this purpose?

Milton Mueller: ICANN.org has been anti-privacy rights of registrants from its inception and the fact that Chris is openly advocating for that particular position here doesn't surprise me at all, but I haven't heard a legal or logical reason as to why - what is stopping ICANN from putting into a new contract a GDPR-compliant form of disclosure that is uniformly imposed on registrars? If he can answer that question, I would reconsider my position but I haven't heard anything.

(Kurt): Great. And as we move forward, I know that Chris wants to answer that, I will reiterate this is one of these areas where we may just have to agree to disagree. So I'm also interested as we make these comments. Right now we've had James put on the table what if we narrow the existing purpose two a little bit and strengthen recommendation two. That's the kind of the thing that'd be interesting as we make our comments. How do we react to that, right?

(Emily)'s put on the table, well what if we find some language in recommendation two or elsewhere that helps strengthen this up? I'd love to respond to that kind of stuff.

Chris Disspain: That's what I want to do.

(Kurt): Great. So, Chris, jump in there.

Chris Disspain: So just to - I just want to deal with Milton's question first and that is the answer to that question is, yes, it is entirely possible to negotiate contractually with each registrar and each registry but the only way that you can mandate it across every contractor's response, otherwise it's a one-on-one negotiation with every registry and registrar. It has to be policy in order for it to become mandatable across the contract.

Milton Mueller: Right. The point - the question I was asking is what stops ICANN from developing a policy that imposes it on registrars uniformly? That was my...

Chris Disspain: That's what this is about, isn't it? That's what I thought we were doing. I mean this is a whole...

Milton Mueller: Why do we need the purpose to do that?

Chris Disspain: We're going to get sidetracked again. I'll come back to that in a second. I wanted to deal with James' and (Emily)'s point. So first of all just in respect to wording, ignore the wording if it's problematic. I just wanted to try to throw something into the pot that shows that there was no question that this is all about policy and bottom up and it is, you know, clear. You know, I keep saying it's in ICANN's mission, third party (unintelligible) et cetera, but that whole thing is couched in terms of it being a policy that stands through the bottom-up multi-stakeholder process.

In respect to James' point, James, you say -- and if it's okay with you I think it would be useful just to be able to have at least a very brief dialog on this -- James, you said from our reading it implicitly extends ICANN -- this is the purpose two reading presumably, the original wording that's out there -- it implicitly extends ICANN's mission to include third parties.

I'm not sure I quite understand what that means. My understanding is that what we're trying to do is to say that it is a purpose that ICANN can, pursuant to whatever the policy is, make sure that the data is supplied to third parties through legitimate purposes that are relevant to the policy, those that are the under the policy. So I'm not clear what specifically what the issue is with that particular wording when you say refers to third parties for you because the

whole point about it is supposed to be that ICANN can mandate third parties have access. Does that - have I misunderstood?

(Kurt): Can we jump back?

Chris Disspain: You said you wanted to talk about particular things.

(Kurt): Yes, yes. You're down? Okay, you guys are down? Perfect. James, can you respond real quickly to Chris?

James Bladel: I think, Chris, we're going back to now our understanding of the language when we filed our comment, and the question that was asked is why do registrars in particular want to see this removed? And I think that if the understanding is that it's ICANN's purpose to ensure that third parties have a right or have some reasonable access to registry and registrar data, then that to me that you're taking the SSR component of ICANN's mission and extending that to the - beyond the SSR and into now the third party interest of the data.

Now if we want to just say that ICANN wants to assume that data because it's ICANN's purpose to respond to those third parties, that's a different matter and that inserts ICANN into that, you know, as an intermediary into that. If you want to basically - if you want to compel us to do all this stuff via purposes and contracts, then by all means please do that. That gives us a heck of a lot of cover that we don't have right now.

Chris Disspain: But isn't that what we're talking about? I'm confused. I thought that's what we were actually saying in essence.

James Bladel: I don't think that's a certainty, no. I don't think that we're very clear that we're trying to talk about - we're talking about exactly that.

Chris Disspain: So what do you think we're talking about then?

(Kurt): Hang on a sec. I think there's something interesting here, which is to play around with language to get at what James is saying, which is that this is fundamentally - if it were fundamentally about ICANN and ICANN being this intermediary, right, and that would give some cover for the registrars in a way that they don't feel like it in the current wording.

So that's a wording issue but the idea is out there on the table and we could play around with that potentially as one of the pathways forward. And this also speaks to one of the comments around how do we narrow to and maybe that can address some of what we're hearing from Milton and the non-commercial folks about this opening up this total can of worms that you don't want to open up, right?

So if there is a way to narrow and not open up, then all of a sudden we could be starting to address some of those concerns. Okay. Let's go over this. I know (Margie)'s had her table up for a while, then Thomas and then Alan. Let's hear - and again there was a specific request, right? Let's try to figure out what it is that we really need here so we can figure out where to slot it in in terms of refine purpose two or add recommendation - whatever it is, right?

Gina Bartlett: And if you can just make your suggestions as concrete as possible like we did yesterday. I know this is a really tough nut to crack but I think that will help us advance where you can. Thanks.

(Margie): This is (Margie) and I haven't really been able to coordinate with my colleagues. But I just want to - I think you asked earlier, you know, what was my reaction to James' suggestion and I really appreciate James' suggestion. I'd

like to see how we could, you know, I'm okay with narrowing purpose two and providing my clarity in the other recommendations. Thank you for making that suggestion. Let's see how we can do that.

(Kurt): Great. And could you speak - is it possible to speak a little bit more about the sort of why this is so important to include before we move into phase two? Like what is the message that you need to send to your key constituencies in this phase one moment versus what is going to happen in phase two?

(Margie): Sure. And I think a lot of it is what (Kurt) mentioned, the perception, if you will, that you've taken away an important purpose for, you know, cyber security and intellectual property and consumer protection. All of those are really what most on this side of the table are concerned about and to be able to ensure that purpose two preserves some of that in some way. We're not wedded to a particular right now. That's why it's hard to answer the question, you know, what wording do you need exactly. I can't answer that question.

But we do feel like if you take a look at the temp spec for example, it's spelled out in the temp spec as a framework concept. And then, you know, we took a different approach in the initial report and that's, you know, came out of the negotiations in Los Angeles, so something maybe closer to the temp spec because then otherwise, just from a perception standpoint, you know, it really looks like we've taken away something that these stakeholders thought that was part of the negotiations for the initial report.

(Kurt): Okay, great. Thomas, then Alan, then Stephanie, then (Diane).

Thomas Rickert: I think we're spending too much time on this. Obviously, the discussion that we're having now is just a cliffhanger until we get to the access discussion. So can't we just leave the language on this and on recommendations as it is

and explain, you know, something along the lines of given the public comment received, given the discussions inside the EPDP team, given the dependencies of the purpose of Purpose 2 and Recommendation 2 with the access discussion, pending legal advice, the EPDP team chose to park this discussion until the time when the access debate has been had.

(Kurt): So an option is basically brackets around all this and saying, "This is what we've been doing but we actually can't make an agreement on this yet until Phase 2," right. So again, is that going to be a strong enough signal for those folks there? It's an interesting idea.

We've got Alan and then we'll work our way down here.

Alan Greenburg: Thank you. The problem with what Thomas is suggesting is we're supposed to be giving something to the GNSO Council and the Board to pass as policy to replace the temporary spec. So it's got to have a level of comfort that it will become policy at this point. We can't just shelve it because it does have to go into something that is formal.

I strongly support what Emily and James said before. I think we need to look at why we have to do this to give the contracted parties a level of comfort, okay. Now, what I think I'm hearing is Chris recited what's in the mission and we all know it. But we also all know because of ICANN's limited scope, we cannot do all of that.

It's fine to say we have to ensure the stability and security of the internet, but we don't have all the tools or the people to do it and I viewed this purpose as giving ICANN the mandate to essentially farm out some of that work to others. And indeed via the contracts with contracted parties because they're the ones who may actually have to send the data across the line.

So I view this as an ICANN purpose to ensure that it can meet its mission given that we are relying on outside sources to do a lot of the work. And I think that's the key to making it an ICANN purpose. How to word it, I'm not going to pretend I understand.

(Kurt): Okay, great. Kristina and then Stephanie.

Kristina Rosette: Thanks, Kristina Rosette: I just wanted to kind of - for those of you who might not be following the chat, I just wanted to cite something that I put in the chat that I really think is part of the problem here. And that is up until now, this working group has been trying to figure out what the ICANN purpose is that we may need or that ICANN Org might need in order to have a requirement that under certain circumstances, registry operators and registrars are compelled to disclose personal data.

What we haven't had though, and I think we started to see the first glimmer of that with Chris' intervention earlier, we haven't had an articulation from ICANN Org as the party to our contracts as to what they believe the purpose needs to be and how it needs to be articulated. And I really think that unless and until we get that, I don't know that we're going to be able to make really meaningful progress in making any changes to Purpose 2 in a way that we can reach consensus on.

Now, to be perfectly clear, I am not saying that we will rubber stamp whatever we get. But up until this point, we're just guessing and I don't think that's productive. So I guess my ask would be, you know, Chris, if it turns out that we could get a formal articulation of what you said earlier, and, you know, as a formal ICANN Org position, I think that would be extraordinarily useful to us. And bonus points if it's actual proposed Purpose 2 wording.

(Kurt): All right, Stephanie and then Kavouss.

Stephanie Perrin: Thank you, Stephanie Perrin for the record. I just wanted to interject in here that the NCSG has no objections to unraveling the ball of worms or whatever you want to call it in terms of that larger policy. The point is we don't have time and if we get back into the dissection of the various parties and their purposes for access, we get back into these use case scenarios where people were claiming that we have to state academic research as a purpose for the collection, use, and disclosure of information under the GDPR, or we won't be able to disclose it to academic researchers, which I would suggest to you is nonsense.

So I would like to park this for now, although like Kristina, I'm real curious as to when ICANN.org is going to pop out of the box with a clear statement of how much liability and control it wants to take on in these matters. Because right now, we don't really know where they stand.

The other point I wanted to raise is that in this whole endeavor on the EPDP, the organization has been saying that we want to maintain the WHOIS to the greatest extent possible and our stakeholder group does not have that as a goal. We want to protect end user rights for the first time in 20 years. Thank you.

(Kurt): So I know (Diane) you've had your thing up for a second. If I can just quick swing to Kavouss, (Ruth), and then I'll come right over to you, (Diane). Is that okay? Kavouss?

Kavouss Arasteh: Yes, I think it's too early to park the question. We can do that at any time when the debate is totally exhausted. We have not reached that point yet. I

think there is a possibility - no, no, please, when microphone given to you, you can talk. But please do not intervene when somebody else talking. I respectfully request you kindly distinguish (unintelligible) of the (unintelligible). Please kindly allow the people to talk. I am not in favor of parking. Still we could (unintelligible).

If everything is exhausted then that option is always available. Thank you.

(Kurt): Thanks, Kavouss. Yes, (Ruth)?

(Ruth): Okay. Three points or one quotation and two points. And just going back to what GDPR requires, and GDPR states that personal data has to be collected for specified, explicit, and legitimate purposes. And not further processed in a manner that's incompatible with those purposes. So I think it's helpful just to bear that in mind as the background to the discussion.

The first point, as registrars or registries are concerned, one alternative form of wording that might be helpful would be to include wording saying that disclosure in appropriate circumstances, and we'd need words around that, is not incompatible with the purposes for which the data was obtained. That would be one suggestion. So there will be no need for an additional purposes file as far as the registrars and registries are concerned. And there's an acknowledgement that there will be disclosure in appropriate circumstances.

The second point though is that if the concern is not about ensuring that disclosure can take place, but being able to require disclosure, then I think that is a different point. It's an important point but it's a different point. And there's been discussion about ICANN's role and responsibility versus the rule and responsibility of registrars and registries and others, which is a connected topic, to which I'm certainly not going to give an answer now. But it does

impact on this. Because if what we're saying is that this is ICANN's purpose then that purpose does have to be articulated.

Because unlike the registrar or the registry, especially the registrar, where you were saying that your primary purpose is to actually fulfill the contract with the registered name holder, what is ICANN's purpose if not to actually enforce this? So I think this links to the relative role of the party and if this is to be an ICANN purpose, if you like, then there is no other purpose that can justify unless this is spelled out.

(Kurt): Okay.

Gina Bartlett: (Unintelligible) based on that information.

(Kurt): Hold on one second. Let's go to (Diane) and Hadia who have been waiting and then let's take a quick pause.

(Diane): Thank you, and thank you, (Ruth). I think that that's the segue that we've all been waiting for and I've been trying to articulate that this lays the needed foundation from a policy and legal standpoint for ICANN to be able to effectuate its purpose and specificity, to allow the contracted party house to flow that information and if necessary under GDPR to specifically identify it to make it the disclosure compatible with the purpose described. And it seems to me that we're at a juncture that we've all worked so hard to get to this point and we've put so much time into this that to park it would be a grave disappointment. And we've narrowed it down from four purposes to one and what message would that send to a multi-stakeholder group.

So since we all have this time that we've put in, we should take that additional leap forward and perhaps, we could work - meet with Chris and the IP ALAC

and the BC could have some time to come up with some wording that we could then present to the group either tomorrow morning or certainly as soon as possible.

(Kurt): Thanks, Great. Hadia?

Hadia Elminiawi: Hadia Elminiawi for the record. So thank you, (Diane) for that. But I was actually going to suggest that after the contracted parties heard from ICANN and heard about their position on the matter, and that this is an ICANN purpose and that they take responsibility for whatever this purpose says. I was wondering that instead of waiting for ICANN to provide something in writing, and then based on that, we articulate the purpose, if Kristina and James would like to propose a wording or language for Purpose 2 based what they heard today from ICANN. And we start from there.

(Kurt): All right, folks, it always seems like there's a little bit of chicken egg problem with these things. Like, oh, we need this information to make more progress but we need to make more progress. So I feel like we're here. We should take a stab, right. There's some very specific ideas on the table. Not everybody is thrilled about them, but they're there.

Some ideas about narrowing Purpose 2 and showing it more clearly as ICANN, while at the same time -- in ICANN purpose -- while at the same time not opening up, not writing it in a way that makes people feel like you're opening up this whole other set of, you know, purposes around ICANN and disclosure. And at the same time, having Recommendation 2 be a little bit more robust. And this group's commitment to working on the standardized access model, whatever you're going to call it, eventually going forward.

Okay. To do that, we can't be sitting here in this group of 20 people and do it. And I'm going to try something where sometimes we've gotten pushback on this, but I'm not - I don't want to go sendoff teams to go negotiate some new agreement. I want to appeal to this third part on our mantras, which is the creativity part, okay.

And I'm interested in putting up some simultaneous creative teams that mix up where James sits with Margie and somebody else, right, and Stephanie, who knows, right. And three or four people go and sit down and see what it looks like to play around with language, right. And we're going to do that and have some simultaneous conversation.

And nobody is agreeing to it. Nobody is negotiating. Nobody is saying, oh, my stakeholder group will definitely live with this. What you're doing is you're just throwing some stuff out, and being creative, and trying to solve what we've actually been able to clarify this morning. We've clarified a lot of what's really going on. You know, why folks are so concerned here about Purpose 2 in the non-commercial crowd, right. We get it a little bit more what's going on here. We get what's going on in these different areas more. And Chris has provided us more vision about sort of where the Board is.

So what I'm going to suggest is that in groups of no more than four people, you go find some place and you play around with the wording, and we give it a go. And don't do it just in your groups. The idea is to go across. And you're not committing. You're not saying my group is okay with this. You're playing around with words and then we're going to look at it and see what we got, okay.

Milton...

Gina Bartlett: Can I just ask (unintelligible) add onto the directions.

(Kurt): Great, thanks.

Milton Mueller: Just a quick intervention to say that in your summary of the ideas on the table, you neglected to mention (Ruth)'s comment that if the other purposes said that there was no restraint on disclosure that you could possibly do away with Purpose 2.

(Kurt): Okay. Thanks for mentioning that. Yes, absolutely. Okay.

Gina Bartlett: Okay, so I think just to be a little bit more specific, if you're crafting the Purpose 2 it's that you craft it as an ICANN purpose. And then I just wrote up what I think I heard (Ruth) suggest as language if you were to speak to the registrar's concerns around disclosure inappropriate circumstances is not incompatible with ways (unintelligible) would need to be part of that purpose.

I just wrote it right there so that you could have that as part of the mix.

(Kurt): This folks, I'm not going to be that directive on this unless you actually need me to be. But I strongly encourage you to physically get up from the table, find somewhere in another stakeholder group, and go down and see what it feels like to try to draft some things, right. I'm not going to say what that draft is going to look like. I'm appealing to your own ability and creativity and this is going to be a little bit painful. It's not going to be the usual process but I think this is the only way to start generating some potential solution.

Chris's idea in the chat is one of the solutions. So definitely look at that in terms of the different language on Purpose 2. Okay. But let's put...

Gina Bartlett: We have breakout rooms too. We have two breakout rooms there and then I think on the other side of that.

(Kurt): Wellington has a breakout room. We've got the little tables out here. We've got some space in here. Folks, let's put 30 minutes on this, a 30-minute timer, and we'll see what happens, okay. So folks, you don't need to reach agreement in your stakeholder groups before you get up from the table. All you need to do is be willing to play around with some language.

Nobody is committing to what you come up to - with what you come up with, excuse me. Nobody is committed to it. By putting some words on the table, you are just throwing stuff out there to see what might work. Then we're going to have plenty of time in your stakeholder groups and in your constituent groups to really think about it and then start more of a process of committing.

Okay. So unless I see a total breakdown and nobody is doing this, I'm going to say I invite you to literally stand up, find some folks who you want to sit with, and sit down and see if you might play around with some language about a new Purpose 2, a new Recommendation 2, and/or something totally different that would allow us to deal with these issues. Okay. So let's see what happens. I invite you to stand up, literally, and find somebody.

Gina Bartlett: Can we get everybody in the room? What we're going to do, it's going to be really hard but we're going to hear the options that were developed and then we have to go to lunch. So David and I were talking, we'll see if we can even get printed the options and you can look at them and discuss them at lunch. But we want to hear what each group's creative ideas are.

We're just going to put it out there so we hear the good thinking and then we'll go from there. David, is there anybody? Where's Stephanie? Can they please come? Hadia, Alan, (Diane). Okay, Marc, is Marc here? There's Marc. Alan, Marc. Okay.

So the first one is Option A. Would that - could somebody from the group in the other room just talk through Option A and just give, you know, walk - say it out loud and then give us just a brief rationale, and then we'll go to Option B. Okay, Alan, Go ahead.

Alan Greenburg: All right, we spent a lot of time talking about why we were doing this and how we could do this. And at the very end, we tried putting some words together. So Option A is the one I ended up drafting. Option B was from Marc. I think Option B wasn't quite finished yet but I'll let him explain that.

Is there any way to make that larger? Hold on. I have my own version here. Ensure that ICANN can meet the requirements of its mission and bylaws by requiring contracted parties to lawfully disclose registration data to accredited third parties. That essentially gives the reason why we will later develop the access model and incorporate it into contracts, makes it clearly and ICANN purpose, that it's meeting our mission and bylaws.

We talked about adding a number of frills to it, you know, including the concept of the fact that ICANN has the mission to ensure SSR among other things, but is not in the position to carry it out itself, and therefore, third parties need to be involved. But that didn't seem to need to be in the actual purpose statement.

Gina Bartlett: Okay. Thank you, Alan. Marc, Option B.

Marc Anderson: Thanks, Marc Anderson for the transcript. I agree with what Alan said. You know, we sort of talked through, okay, what do we need to accomplish with this and then we put pen to paper. And so what we're trying to do is draft an ICANN purpose tied to mission and bylaws, sort of recognizing Chris' intervention from earlier, which we thought was helpful.

And draft - and I guess where we were going is, you know, I think everybody in our group, you know, agreed that this is I'll use the word placeholder to get us language that recognizes that this is an ICANN purpose and gets us to the Phase 2 discussions where we hammer out the details. And so Option B was a work in progress but where we landed with that was the EPDP recognizes the ICANN Org has a purpose in ensuring or enabling, we were discussing that, lawful access to registration data in accordance with its mission and bylaws.

Gina Bartlett: Great. In one minute or less, anybody from that group wants to add in that was missed before we go to the next option?

Man: Can I ask a question? Where would you put that? I don't understand where that goes.

((Crosstalk))

Gina Bartlett: There's two different options for Purpose 2.

Man: That's not a purpose. That's a recommendation.

Gina Bartlett: I believe this small group was developing a purpose statement. They were supposed to be purpose statements. They may feel like recommendations.

Man 1: Just like the other...

((Crosstalk))

Gina Bartlett: It should change because Option A and B were purposes.

((Crosstalk))

(Kurt): Just like other recommendations say ensure, coordinate, facilitate, this one isn't sure.

((Crosstalk))

(Kurt): Same form as the other purposes.

Gina Bartlett: It's a purpose. I'm just trying to be super clear. These two options, A and B, were constructed as a replacement for Purpose 2. The group did not negotiate. They were just talking about different ideas and we landed with these two different - these group landed with those two different ideas for Purpose 2.

Marc Anderson: Gina, yes, so our intent was - we discussed leaving Recommendation 2 as is and then what we were working on was new language to replace the existing purpose or - yes, Purpose 2. So that's where we were headed when time constrained us.

Gina Bartlett: This is replacement text for Purpose 2. Replacement text. So what we'd like to do is look at Purpose 2 from the group in here, and I know you also did Recommendation 2.

(Kurt): Yes, so let's start with the Purpose 2 on the other group just quickly. No, that's not it.

Gina Bartlett: Can you read it, Emily?

(Kurt): Hang on. Everybody, hang on.

((Crosstalk))

(Kurt): Can we just pause? Hang on. Let's just take a quick pause here and get it up on the screen correctly. So everybody, quick break. So we're having just a technical difficulty on scroll.

((Crosstalk))

(Kurt): That's not it. Okay, yes, Option C. So Option C is the Purpose 2 new text, okay. So Emily, did you want to walk us through it just real quick?

Emily Taylor: So it builds on a lot of the existing language. So the core of the existing language was maintaining the stability, blah, blah, blah, of the DNS. What we added, I think in accordance with ICANN's mission, was there in the original text as well, okay.

So we added bits at the beginning and end. So we put in contributing to the maintenance of the security, stability, and so on, in accordance with ICANN's mission. And then new text as through enabling responses to lawful data disclosure requests. So that's gone away from the language used in the original but it's using this concept of responding to request, a lawful request for data disclosure, rather than predetermining an outcome of what that system or process will eventually be, okay.

But it's intending to mean the same thing, and in fact, when we come on to talk about our proposals for Recommendation 2, we explore that and call out the wording in the previous wording in the charter, to make that clear.

(Kurt): And if I just might add, or someone else in the group can add, there's two big steps forward here, at least two. One is that it removes the reference to third parties, which was the heart attack kind of situation from registrars in particular, right. So the reference to third parties is gone and that's replaced by enabling responses to lawful data disclosure requests.

And on the other hand, from Milton's standpoint, it's a step forward from what used to be there because it speaks specifically to enabling responses to lawful data disclosure requests. So that puts some barriers around what we're talking about and that created a sense of comfort for folks who were worried about the expansiveness of it, right.

So I don't know if anyone on the group wants to comment on that real quickly. Did I capture that correctly? In addition to the first thing, which addressed Kavouss' concern that this was somehow superseding the mission, et cetera.

Gina Bartlett: Should we look at the Recommendation 2 language from this group in here since they did it and to inform people's thinking?

(Kurt): Yes, let's do that. So if we scroll down to the - what this group did around Recommendation 2. There we go. Okay, so Emily, do you want to try this again? Sorry, Emily was the scribe.

Emily Taylor: This is not - I really hate to say, this is very much a group effort. I had a laptop so I typed it up. So basically, our starting point was a copy/paste of

Recommendation 2. But we wanted to specifically call out the links to Purpose 2 and then we did some work around what was going to happen next, okay.

The bullet points, we added a bullet point at the top. I'm going to back to the detail, okay. The rest of the bullet points apart from the top one are exactly as they were and we fiddled a bit with the end a bit. So I'll go back and describe what we did.

So in accordance with the charter and Purpose 2, we're undertaking quite a strong word, which arrived at after a lot of suggestions, to make a recommendation pertaining to a standardized model for lawful disclosure of non-public registration data. And then we call out to the previous way it was referred to in the charter as a standardized access model. Now that the gating questions in the charter have been answered, because this is our final report and so this is a real clear signal that we believe that we've done the first bit and we're now moving forward into the second bit. And this will conclude addressing questions such as, and we put in a new question, whether such a system should be adopted. That's a new one.

And then our final addition, apart from changing a passive voice to an active voice in the end, was to say in the end bit, in this context, the EPDP team will consider amongst other issues disclosure in the course of intellectual property infringement and DNS abuse cases. That was the wording that was there. And then we added wording that we wrote down from what (Ruth) had suggested earlier. And that disclosure for legitimate purposes is not incompatible with the purposes for which such data has been collected.

We think that wrote down what (Ruth) said earlier correctly, but (Ruth), we'd appreciate your input on that final, well, on all of it really. But on whether we were accurate in copying that. Thanks.

(Kurt): Okay, great. I see a hand from Alan who's had his hand up for a while, and the hand that just went up from Kavouss. Alan, do you want to weigh in on that, and then Milton and folks, we're not going to - it's lunchtime, right. So we are just doing...

Gina Bartlett: We're late for lunch.

(Kurt): We're late for lunch so we're doing fast pass, give me your 20-second reaction and then we can talk about it over lunch. For real, like 20 seconds, Alan, if you could.

Alan Greenburg: Thank you. I like the recommendation. I haven't read it thoroughly but it sounds good. If you can scroll back to the Option A, B, C with C at the top. No, the other option A, B, C.

((Crosstalk))

Alan Greenburg: The main difference between them, and I have no problem with your version of the wording overall, the main difference between them is you're mentioning SSR. We're making a reference to the mission and bylaws. The reason we did that is because we were trying to set the stage for the access model, which will look at things other than SSR. So we said putting it in the context of the mission and bylaws essentially said that completely fits.

It's still limited by the mission and bylaws, but it isn't restricted just to the SSR. So there's a segue directly into the access model work that will follow.

And from Chris' point of view, it gives a purpose that applies to the whole access model, not just part of it.

(Kurt): Thanks. Kavouss?

Kavouss Arasteh: Yes, one request and one comment. The request is that distinguished colleagues, please kindly try not to impose a stylistic way of expression (unintelligible) the sentence. If you have a problem of substance, say the substance. But the style you don't get to decide because we have no time. Now, the comment that I have in the last one line say that is not incompatible. Why would we not say is compatible rather than is not incompatible. It's compatible.

(Kurt): We'll talk about that over lunch for those who use that phrase all the time. Milton, you get the last work and then we're going to lunch.

Milton Mueller: Just a quick point about the last sentence of Recommendation 2 that Emily - I wasn't there for that. But if you could bring it up, this whole business about legitimate - you've taken (Ruth)'s comment, there you go, disclosure for legitimate purposes and not incompatible purposes. I don't know what that's doing there. Why is it connected to a sentence about considering IPR and DNS abuse. Those are completely different concepts. I don't understand why they're stuck together in the same sentence.

(Kurt): If they were separated in two sentences, would that make more sense for you?

Milton Mueller: It would definitely but the context within that statement that's being made needs to be clarified. That's like an overarching statement about that maybe should go at the beginning of this whole thing.

(Kurt): Wonderful. Okay, great guys. Good feedback. It looks like we're getting somewhere. This is what we're going to do. We're going to take lunch. We're late for lunch (unintelligible).

Gina Bartlett: So hustle to lunch because lunch is in the same place in the restaurant where we had breakfast and what time are we coming back?

(Kurt): What time is it now?

Gina Bartlett: It's quarter till. An hour?

(Kurt): Take an hour for lunch and we're back here in our seats, ready to roll, at quarter of. Okay.

Gina Bartlett: Thanks everybody for that work.

(Kurt): That was fantastic. Thanks everybody.

END