

# CCWG and jurisdiction - draft Requirements

22 March 2015

## Status of this paper:

This paper is a discussion paper, based on an initial email exchange initiated on the CCWG list on 15 March in preparation for the F2F meeting in Istanbul. It attempts to summarize the input received to date from Carlos Raul Guttierrez, Greg Shatan, Pedro Iva Ferraz da Silva, and Rahul Sharma. Some parts of the structure are intentionally left blank, awaiting further discussion.

It is anticipated that this paper provides a basis for discussion in Istanbul to determine how the CCWG will address the issue, and collect associated requirements.

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'Jurisdiction' influences directly the way ICANN's accountability processes are structured and operationalized. The fact that ICANN today operates under the legislation of the state of California grants the corporation certain rights and implies the existence of certain accountability mechanisms but also imposes some limits with respect to the accountability mechanisms it can adopt. The topic of jurisdiction is, as a consequence, of relevance for the CCWG Accountability.

The jurisdiction issue is a multi layered issue. The following "layers" have been identified by the group :

### **1) place and jurisdiction of incorporation & operations, including - tax system, human resources, etc.**

Associated requirements :

- a) strong corporate governance legislation, providing efficient accountability,
- b) but at the same time, enabling flexibility so that the multistakeholder model can be translated into this legal framework.

### **2) jurisdiction of places of physical presence**

Associated requirements :

- a) Places of physical presence need to provide stable labour legal frameworks(to hire staff)
- b) some level of flexibility for visas (to accomodate international staff and travel by community members)
- c) Physical presence should also take into account security concerns, both for the sake of staff as well as for operations.

**3) governing law for contracts with registrars and registries and ability to sue and be sued in a specific jurisdiction about contractual relationships**

Associated requirements :

- a) stable and predictable legal regime
  
- b) examples of questions raised include :
  - i) What laws should determine what domain names (including TLDs) are acceptable (example of '.xxx' domain)?
  - ii) What laws determine whether domains from a particular region can be cancelled?
  - iii) What laws should determine whether IP addresses or domain names are property or not? Should the local court decision be enforceable across the globe?
  - iv) What laws should govern whether domain seizure can take place based on local court decisions citing IP infringement?
  - v) What laws should determine whether citizens of a particular nation states can apply for gTLDs or not?

**4) ability to sue and be sued in a specific jurisdiction for action & inaction of Staff, and for redress and review of Board Decisions, IRP, and other Accountability and Transparency issues, including AoC**

Associated requirements :

- a)

**5) relation with the national jurisdictions for particular domestic issues (ccTLD's managers, protected names either for International Institutions or Country and other geographic names, national security, etc.) , privacy, freedom of expression,**

Associated requirements :

- a)

**6) - relation with other international/global related organisations (ITU, WIPO, WTO, etc.) [MW: not sure I see how this fits in the jurisdiction issue]**

Associated requirements :

- a)

To date, ICANN is a not for profit corporation incorporated in California and bound by California laws. This is how ICANN was incorporated in the first place but it is also a provision included in paragraph 8 of the Affirmation of Commitments (AoC) signed between ICANN and the U.S. Government, through its Commerce Department, as follows:

8. ICANN affirms its commitments to: (a) maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet; (b) **remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community**; and (c) to operate as a multi-stakeholder, private sector led organization with input from the public, for whose benefit ICANN shall in all events act.

ICANN's bylaws also state that its principal offices shall be in California, which in fact make ICANN subject to California laws and Court jurisdiction, as follows:

#### *ARTICLE XVIII: OFFICES AND SEAL*

##### ***Section 1. OFFICES***

*The principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America. ICANN may also have an additional office or offices within or outside the United States of America as it may from time to time establish.*

With this in mind, addressing the issue from a WS1 point of view (having measures in place or committed before the transition takes place) may be carried out with simple solutions such as minor modifications to ICANN's bylaws.

The implementation of such modifications would in turn be addressed in WS2, understanding that while jurisdiction is an outstanding issue, it is also an issue that can't be fully taken care of by WS1 but could have its essential and initial analysis at this stage.