

**PROPOSED CHANGES IN 2/27 DRAFT JURISDICTION SUBGROUP REPORT (v1.2.6)**

<b>NOTE</b>	<b>PROPOSED CHANGE</b>	<b>ADDITIONAL INFORMATION</b>
<b>1</b>	Revised text added and moved to footnote, stating “In the future, if ICANN is subject to other similar sanctions (e.g., similar in scope, type and effect and with similar methods of relief for entities not specifically sanctioned), the spirit of these recommendations should guide ICANN’s approach.”	<i>This is a more measured version of text in the prior draft, which essentially stated that ICANN was obligated to seek a license, waiver or other relief if an applicant was barred by sanctions, regardless of the reason or type of sanction or the method of obtaining relief. Given the variety of possible sanctions and methods of obtaining relief, this appeared too inflexible to be stated as an obligation.</i>
<b>2</b>	The Report has been changed to recommend that the Registry (or Registrar) choose from among the choice of law options on the “menu,” i.e., the choice would not be negotiated with ICANN.	<i>The Public Comment draft mentioned two options: contracted party choice and negotiations with ICANN, but gave no opinion on which option would be preferable.</i>
<b>3</b>	This is a general note that section describing the work of the Subgroup after the draft was submitted to the plenary for the Abu Dhabi meeting has now been “accepted” into the document.	<i>This is noted for anyone who may not recall that this was in “suggest” mode for last week’s call. This section is further revised by Note 4, below.</i>
<b>4</b>	In the “Overview of the Work of the Subgroup,” the following has been added: As a result of these discussions [in Abu Dhabi], the section “Further Discussions of Jurisdiction-Related Concerns” was added the draft Report, suggesting a path forward for these concerns beyond the CCWG-Accountability through a further other multistakeholder process.	<i>This is in response to a suggestion by Thiago Jardim, in order to reflect that this section was not in the document submitted to the Plenary, but rather that it was added in response to the discussion in the F2F plenary meeting in Abu Dhabi.</i>

NOTE	PROPOSED CHANGE	ADDITIONAL INFORMATION
4.1	<p>This suggestion has evolved somewhat. Thiago earlier suggested that “Comments by other countries in support for the further jurisdiction-related discussions, in particular immunities, should be specifically referenced.”</p> <p>After further discussion, Thiago’s revised suggestion appears to be:</p> <ul style="list-style-type: none"> <li>• Comments by other countries in support for the further jurisdiction-related discussions, in particular immunities, should be specifically referenced.</li> <li>• it would be fair to also explicitly give similar satisfaction to the contrary voices</li> <li>• These are not really contrary to Brazil’s dissent, which should be made explicit in the report as part of the subgroup’s response to the comments received.”</li> </ul> <p>No change has been made to the Report based on this Note, as it unclear what the level of support for this plan. The Subgroup needs to determine if this addition should be made and if so, how.</p>	<p><i>The 2/26 draft framed this as a suggestion that the comment from France should be specifically referenced. Steve DelBianco responded that: “I do not understand the justification to single-out one comment (that of France) among so many that we received and considered. Pending an explanation of that justification, I would not support a note that calls attention to just one comment.”</i></p> <p><i>Thiago replied: “On Note 4, it is a fair point, and I do not wish to push it further. My main point was as I clarified, to add text reflecting the subsequent addition to the report of the “further discussions on jurisdiction-related concerns”, and not so much concerned with singling out any of the comments received. So, again, what appears as Note 4 is distinct and independent from what appears as Note 4.1. Yet I would only suggest dropping point 4.1 if others believe that the report, as slightly revised in reaction to the public comments received, did respond at least in some fashion to the comments that joined their voices to Brazil’s dissent in asking for further discussions to take place, notably on immunity. This not being the case, I do believe – as Greg suggested* – it would be fair to also explicitly give similar satisfaction to the contrary voices, which however, as I clarified in our previous call, are not really contrary to Brazil’s dissent, which fact should in my view be made explicit in the report as part of the subgroup’s response to the comments received.”</i></p> <p><i>*Clarification from Greg: my suggestion (as cited above by Thiago) should not be construed as support for that particular outcome.</i></p>

<b>NOTE</b>	<b>PROPOSED CHANGE</b>	<b>ADDITIONAL INFORMATION</b>
<b>5</b>	<p>This text is proposed to be added at the end of the recommendations on sanctions:</p> <p>“When implementing each of the recommendations in this section, their utmost importance to ICANN in carrying out its mission and facilitating global access to DNS should be considered. Taking into account this importance, the implementation phase should start as soon as possible, but in no event later than six months after approval by the ICANN Board.”</p>	<p><i>At the 7 February subgroup meeting, the NCSG comments on this recommendation were discussed and NCSG members on the call were asked to propose possible edits to this text for consideration by the Subgroup. Draft language was submitted by Farzaneh Badii and Tatiana Tropina for the Subgroup's consideration; this proposed language has now been edited for clarity.</i></p>
<b>6</b>	<p>This is a general note that the Stress Tests have now been “accepted” into the Report document.</p>	<p><i>This is noted for anyone who may not recall that this was in “suggest” mode for last week's call. This section is further revised by Note 7, below.</i></p>
<b>7</b>	<p>A “friendly amendment” was made on last week's call to Stress Test 1 in “Proposed Accountability Measures,” to clarify that any registrar's ability to “accept domain registration requests from citizens of any country” is still “subject to limitations and obligations due to applicable law and registry restrictions.”</p>	<p><i>This change was inadvertently excluded from the prior draft, although it was agreed on the call without objection.</i></p>