

responser/responses	Should be analyzed
Vanda Scartezini (Brazil)	?
Brian J. Winterfeldt (USA)	?
Luis R. Furlán (Guatemala)	No
Karina Cortes (Puero Rico)	No
Rika Tsunoda - MIC Japan	No
Carlos Vera (?)	No
Michael Graham (USA)	No

Mohammad Reza Mousavi (Iran)	Yes
Just Net Coalition	Yes
QUEH Ser Pheng Singapore GAC Representative	No

farzaneh badii - Internet governance Project (USA)	Yes
Rita Forsi (Italy)	Yes
Jesús Rivera Venezuela GAC Represent	?
Mzia Gogilashvili - Georgian govt	No
Mathieu Aubert (?)	No

Lance Hinds (Govt Guyana)	?
Ministry of ICT of Colombia Jaifa Margarita Mezher Arango	?
Ministry of Telecom and Mass Communications of the Russian Federation	Yes
".swiss" domain registry	Yes

European Commission

Yes

Internet Governance Research
Center, Chinese Academy of
Information Communications and
Technology

Yes

Q1

No not at this moment.

Mayer Brown LLP represents various clients including brand owners, registrants, registry operators and registrars. The identity of these clients, where not already a matter of public record, is subject to attorney-client confidentiality. These parties have generally been affected by ICANN's jurisdiction, primarily the prescription of jurisdiction and venue in Los Angeles County, California. We support such jurisdiction and venue in these contexts. Otherwise, ICANN's jurisdiction has not negatively affected our clients' businesses, or their ability to purchase or use domain name services. Overall, we strongly favor keeping ICANN incorporated and headquartered in California, as agreed upon during CCWG-Accountability Work Stream 1.

No

No

I do not recognize such cases as those in the question.

No

Not to my knowledge

Using some of essential services regarding domain name and numbering are definitely banned because of the political conflicts (such as US sanctions) which we think they should be neutralized by ICANN jurisdiction.

(no response)

No

Issue 1: Application for new gTLD registration proved to be difficult for residents from countries subject to the US sanctions. ICANN in the new gTLD applicant guidebook stated that: "In the past, when ICANN has been requested to provide services to individuals or entities that are not SDNs (specially designated nationals) but are residents of sanctioned countries, ICANN has sought and been granted licenses as required. In any given case, however, OFAC could decide not to issue a requested license." (long response - see submission) Issue 2: Sometimes the registrars seem to follow OFAC sanctions even when it appears that they are not based in the U.S. For example Gesloten.cw, a registrar based in Curacao (Netherlands Antilles) follows OFAC regulations in its legal agreement with the registrants. Another example is Olipso, an ICANN accredited registrar based in Turkey (Atak Domain Hosting). Olipso also prohibits persons located in sanctioned countries from using its services due to OFAC.....Issue 3. Transferring money from countries under sanction to ICANN, due to US financial embargo on these countries, is very costly. (long response - see submission

Yes. In 2013-2014 Italy was directly involved in the so-called ".wine issue". Italy and European Union recognize the protection of Geographical Indications (GIs)¹ through a very detailed regulation. The de facto non-recognition of GIs by US, and consequently by ICANN for example in its Registry Agreement and Uniform Domain Name Dispute Resolution Policy (UDRP)², caused almost two years of intense debate among GAC members (US, Australia and New Zealand against the rest of the GAC), between GAC and the ICANN Board, between Governments and ICANN³. In line with the American approach to the GIs, domain names which consist, contains or unduly evoke GIs, have not been accorded consistent protection as those defined in the International Treaty or the European Regulation. For that reason, such domain names can be easily registered and used in a deceptive manner. Italy asked for protecting GIs by reserving the registration of their respective domain names to the rightholders, according to the TRIPS provisions, but ICANN was reluctant to impose such safeguards to the candidate Registries. In the end .wine issue was closed not in a satisfactory but at least acceptable manner for Italian rightholders, but this could serve as a good example to show how the US jurisdiction of ICANN affected the Italian business.

No

No

No/. The handling of complaints like Whois inaccuracy is improving

No difficulties to date

Domain name services have not been affected by ICANN's jurisdiction

YES....We also believe that in addition to the review of actual confirmed ICANN failures to fulfill responsibilities due to its jurisdiction, it's necessary to analyze risks of potential future ICANN's failures to fulfill responsibilities due to its jurisdiction. Cross Community Working Group on Enhancing ICANN Accountability should not replace comprehensive risk analysis with just gathering information about actual incidents. We therefore recommend that Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) carry out comprehensive ICANN's risk analysis and develop solutions to mitigate these risks during Work Stream 2. (long response - see submission)

awaiting revised translation

Yes. 1. Application of the EU legislation on the protection of personal data to WHOIS Directories. The European Commission has received several complaints from EU citizens, pointing out to the potential violation of their right to protection of personal data under EU law (Directive 95/46/EC, to be replaced by Regulation 2016/6791 on 25 May 2018), in relation to processing of personal data by the WHOIS database, including publishing personal data by registrars. The most recent case we have is from February 2017, when we received an email from a European citizen working from home as a freelance photographer expressing concerns as to the protection of her right to data protection, given that her street address was displayed publicly in the WHOIS database. The problem is not new. A letter on this matter was sent to ICANN by Article 29 Data Protection Working Party (composed of national supervisory authorities) already on 26 November 2012. This letter highlighted in particular:.....

2. Application of EU legislation on the protection of geographical indications to the new gTLD programme. We have also had conflicts of jurisdiction in the context of the new gTLD programme, with inconsistencies with EU legislation on the protection of geographical indications (GI) concerning .wine and .vin. Fortunately, after long and protracted discussions and CEP (Cooperative Engagement Process) a satisfactory solution for the Parties was finally found in this particular case, in order to avoid consumer deception and misappropriation risks, and to protect European Union and national laws (including those applicable to other jurisdictions). The Commission tried to find a solution which respects the legitimate interests of the European wine sector by

Representative from a Registry: These are the advices given by the relevant business teams and the legal affairs team as I had not participated in the previous meeting. Their advice concerns the questionnaire only. According to them, there is no impact on our business, present and past.

Liu Limei: As a contracting party, we noted that there was a very interesting thing as regards jurisdiction when we signed with RA. The agreement with RA states that different laws may be applicable to different contracting parties. A conventional commercial company or institution observes the laws of the Rocky Mountain County, California, in contracting with the ICANN, while some governmental organizations and organizations with special needs observe the Swiss laws. Regardless of my limited knowledge of laws, I believe it is not fair and is unreasonable. Frankly speaking, they are conditional, which is, in my opinion, the biggest problem. This is our key point of view.

Q2	Q3
No, at least on my knowledge	No nothing to help
None of these disputes involved ICANN directly as a party. However, we strongly favor keeping ICANN incorporated and headquartered in California, as agreed upon during CCWG-Accountability Work Stream 1. (See response for details)	No. We do not see the probative value of this inquiry, which attempts to garner information where survey respondents have no actual or direct knowledge.
No	No
Yes. It has affected the litigation process positively given that Puerto Rico has political (and therefore juridical) ties with the United States.	No
I do not recognize such cases as those in the question.	No
No	No
Not to my knowledge	No

(no response)

(no response)

(no response)

(no response)

No

No

<p>ICANN's jurisdiction has affected .IR, .SY and .KP due to a case brought by a group of terrorist victims in the US that had a writ of attachment against the state of Iran. Relying on US laws and arguing that ICANN is incorporated in the US, the litigants argued that these ccTLDs are attachable property that could be seized by the plaintiff. It was a long legal battle but the importance of its effect on the operation of .IR and how the people of Iran who had registered domain names with .IR reacted is ignored during the discussions. (long response - see submission)</p>	<p>We have reiterated some of the issues we said in this blog post, but please refer to it for other issues and more explanation. http://www.internetgovernance.org/2017/01/13/icanns-jurisdiction-sanctions-and-domain-names/</p>
<p>Yes, for the .wine issue, Italy filed two Reconsideration Requests⁴ , one of which was signed by the then Minister of Economic Development, Ms. Federica Guidi⁵ . Both the Reconsideration Request were rejected</p>	<p>(no response)</p>
<p>NOT YET, particular cases are usually resolved with the intervention of competent national authorities and interested parties as well as with the participation and advisory role of WIPO staff.</p>	<p>No</p>
<p>No</p>	<p>No</p>
<p>No</p>	<p>No</p>

This has not been an issue	I do not
For the .co ccTLD, dispute resolution is carried out pursuant to the UDRP policies and no impacts have been observed.	We do not have any links or copies.
No information available	No
awaiting revised translation	awaiting revised translation

(no response)

(no response)

Zhang Jianchuan: I think the key point here is logical deduction. Once we face a lawsuit, do we have to settle it in the United States or Singapore? I'd like to ask about your experience on the issue, especially the fourth question. You have to offer the organization evidence and evidence is hard to collect. The question is difficult to answer if similar issues did not happen before. So is logical deduction. No one wants to go to court in California on a dispute.

Liu Han: I want to first talk a little bit about the controversy over the judicial jurisdiction of ICANN and its relevance to China. I think within the current legal setting, Chinese companies can have a way to cope with the problem of resolving disputes with ICANN under American law. From a pure legal point of view, if a Chinese company has a litigation with ICANN in a California court, there is a federal court precedent. In the Vitamin C case, the Second Circuit Court ruled that it defers to the Chinese law as interpreted in the amicus brief provided by the Ministry of Commerce of the Chinese government, since it has no expertise on Chinese law. The result is that the Chinese company won the case. The implication is that if such a case related to ICANN arises in a California court, the Chinese company and the Chinese government can cooperate to present Chinese law to American courts.(long response - see submission)

Q4A

none to help.

No, we are not aware of any instances where ICANN has been unable to pursue its Mission because of its jurisdiction.

No

No

No

No

(no response)

Domain name registrants in Iran which is subject to U.S. sanctions have been struggling with the arbitrary cancellation of their domain names by some registrars. Some registrars (both American and non-American) might stop providing services to countries sanctioned under the Office of Foreign Affairs Control (OFAC) regime. Sometimes they do this without prior notice. For instance several applications were submitted by Iranian entities and ICANN didn't approve referring to applied sanctions.

2. As you may know, the United States District Court of Columbia issued an order for ICANN to seize Iran's internet domain (.ir) and IP addresses in order to pressure Iran for another totally refused settlement.

Court papers have been served to ICANN and seek ownership of top-level domain names like .ir TLD, the ایران TLD and all Internet Protocol (IP) addresses being utilized by the Iranian government and its agencies. The court didn't accept their application but it is considered as an outstanding major risk we would like your cooperation to avoid.

....The FCC is just the more obvious US regulatory agency that can exercise authority over ICANN. As the digital phenomenon, and with it the significance of Internet names, begins to pervade every social sector, transforming it and becoming a central feature of it, the mandate of practically every US regulatory agency could impact ICANN's functions. This holds especially as sector-based gTLDs are allowed (often with their own rules for inclusion, for example .pharmacy) and when gTLDs are granted to entities that are key players in different sectors. Consequently, whether it is the Food and Drugs Authority or the Federal Trade Commission or the Federal Energy Regulatory Commission, or various state utility commissions in the US, and so on, there is no end to very possible US jurisdictional incursions upon ICANN's functions. A sector regulator in the US, say in the area of health/ pharmaceuticals, transportation, hotels, etc, may find issues with the registry agreement conditions that ICANN allows for a sectoral gTLDs that is in the area of its mandate. Such a sector regulator might be able to force ICANN to either rescind or change the agreement, and the conditions under it. (long response - see submission)

No

(no response)

(no response)

No

No

No

Not at this time, logic suggests however that ICANN may have challenges pursuing in countries under terrorist watch or US Economic Sanctions

We do not have any documented material of instances where ICANN has been unable to comply with its mission.

YES....We stand firm on the position that in addition to the post-factum review of actual confirmed ICANN failures to fulfill mission due to its jurisdiction, it's necessary to review the following relevant substantive questions:

- Why the resources of such a global public infrastructure like Internet are under the jurisdiction of the single state?
- Why all country code top-level domains, ccTLD (for example, ".RU" or domains of any other country) should be under the jurisdiction of the single state?
- Why geographical domains (for example, ".AFRICA") should be under the jurisdiction of the USA?

Such approach will help to avoid potential risks, in particular, when ICANN will have to implement the requirements of trade sanctions or court judgments of the certain jurisdiction.
(long response - see submission)

awaiting revised translation

(no response)

Liu Han: Second, regarding global Internet governance, I argue that state sovereignty has been never absent in cyberspace, despite numerous claims that cyberspace is independent from governments of physical world. The creation of ICANN, for example, happened against the backdrop of a soul-stirring event in which the American government tried to put the root of DNS in their control. I mean the Clinton administration's 1998 move against Jon Postel's attempt to removed four root DNS servers from the supervision of the federal government. That shows the historical origins of the controversy over global Internet governance: the sovereign nation-state has never relinquished its fundamental control over the root of the Internet.(long response - see submission)

Q4B

I believe any jurisdiction has its pros & cons, but we need to see how things will perform during Mr. Trump's Administration in US. By now it is unpredictable if the reality we have seen till now under US jurisdiction will continue. It is, in my opinion too early to take any decision YES or NO for current or alternate jurisdiction due changes in several relevant countries occurring this and next year.

For all of the reasons and rationale expressed as part of the Work Stream 1 consensus building process, we do not believe any alternative jurisdiction would provide any greater ability for ICANN to pursue its Mission.

No

No

No

No

No

(no response)

The best and most sustainable arrangement would be for ICANN to be incorporated under international law, which will need to be negotiated specifically for this purpose among countries. This is also the most democratic arrangement. It can be done without touching the current multistakeholder governance structure and community accountability mechanisms of ICANN. (long response - see submission)

No

(no response)

In general, conflicts of jurisdiction on the Internet might have implications with respect to the "EU acquis", e.g. as regards data protection and geographical indications; For that reason it is necessary that an Independent third party studies possible conflicts of laws and jurisdictions in relation to the Internet and, on that basis and if warranted, consider options for action in order to prevent these conflicts and to solve them should they occur.

No

No

No

All Jurisdictions have specific policies that may or not prevent ICANN from pursuing its mission in some instances

From our experience, we do not have any confirmation of any alternative jurisdiction for ICANN to pursue its mission.

YES ... In this regard, we consider necessary the detailed assessment of the equitable distribution of Internet governance resources on the basis of international treaties between states under the auspices of the United Nations (see UN Charter), beyond the limits of national jurisdictions. We urge to discuss different possible ways to address the issue of ICANN's jurisdiction. For example, ICANN could be established pursuant to the international law. Another possible way is to separate main ICANN's responsibilities (policies development, operational activities, and root zone management) over different jurisdictions. One more way to arrange ICANN's activity and to address jurisdictional issue could be U.S. Government decision recognizing ICANN's jurisdictional immunity in accordance with the United States International Organizations Immunities Act.

awaiting revised translation

While the European Commission is not in a position to document the existence of alternative jurisdictions where ICANN would not be prevented from pursuing its Mission, we are aware that ICANN, over the course of several years, has been investing a significant amount of work, time and resources investigating this issue. It would be useful to know the outcome (if any) of this work and therefore we would welcome an exhaustive ICANN report on its activities in this regard.

Song Zheng: In my opinion, ICANN has two features. One is that it serves only public welfare and engages the security and stability of root server systems. These tasks, including the distribution of top-level domain names in countries and regions, are absolutely the scope of the sovereignty within countries and purely of public welfare, and should not be controlled by a single government or jurisdiction. From this point of view, we may doubt why such affairs are subject to the jurisdiction of a country and believe that they should be given judicial exemption. It is similar to the United Nations in New York. The US police cannot just lock away the UN Secretary-General. This is unactionable. Commercially, it may be actionable. However, even if it is possible to make such legal arrangements, it would be truly difficult to achieve such effects. (long response - see submission)