

## QUESTIONS FOR ICANN LEGAL FROM CCWG ACCOUNTABILITY JURISDICTION SUBGROUP

- A. Jurisdictions Where ICANN May be Subject to Litigation. The CCWG-Accountability Jurisdiction Subgroup would like to understand in which jurisdictions ICANN (incorporated as a nonprofit corporation in California) may be subject to litigation as a defendant (i.e., where the court's personal jurisdiction over ICANN may be satisfied and maintained). The Jurisdiction Subgroup would appreciate the assistance of ICANN Legal in this task. The Subgroup has prepared the following questions:
1. We have assumed, but would like to confirm, that ICANN is subject to suit in the countries where it has the following "physical presences":<sup>1</sup>
    - o Headquarters office and state of incorporation:<sup>2</sup>
      - USA (specifically Los Angeles, California)
    - o Hub offices:
      - Turkey
      - Singapore
    - o Engagement offices:
      - China
      - Belgium
      - Switzerland
      - Uruguay
      - Kenya
      - Republic of Korea
      - USA (specifically Washington DC)
  2. We believe it would be useful for us to know whether jurisdiction over ICANN in litigation could be maintained elsewhere (other than the above). Specifically, we would like to know about the following categories of jurisdictions:
    - a. US states and jurisdictions other than California and the District of Columbia (e.g., Illinois, Guam).
    - b. Countries or jurisdictions other than the above where ICANN employees reside and work remotely (and are being paid by ICANN in the employee's local currency) (e.g., France).
    - c. Countries or jurisdictions where ICANN has no ongoing physical presence but has held one or more ICANN public meetings (e.g., ICANN 57 in Hyderabad, India) or other significant events (e.g., GDD Summit) which are significant to ICANN's multistakeholder operations.
    - d. Jurisdictions where contracted parties are incorporated, headquartered or located (e.g., Ireland).
    - e. Jurisdictions where ICANN meets none of the above criteria.

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<sup>1</sup> If there are other jurisdictions where ICANN has a "physical presence," please add them to this list.

<sup>2</sup> We assume, but ask you to confirm, that there is no other jurisdiction that would also be deemed to be ICANN's headquarters location and/or state of incorporation.

3. If there is a judgment against ICANN, would the impact on ICANN differ based on the category of jurisdiction above? Would ICANN be able to avoid the effects of a judgment in any jurisdiction (e.g., by ending its physical presence in that jurisdiction).
4. How would concepts of general jurisdiction vs. specific jurisdiction<sup>3</sup> apply to any of the above questions?
5. How do issues of proper venue<sup>4</sup> (or the lack thereof) impact the answers to the above questions?
6. How would questions 1-2 be answered for PTI, rather than ICANN?

We note that in its [Articles of Incorporation](#) ICANN states, among other things, that it shall promote the global public interest in the operational stability of the Internet and that it will operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law.

We also note that in its [Bylaws](#) ICANN commits, among other things, to operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law.

We generally understand that in many places jurisdiction for litigation is premised on physical presence in some manner. But we wonder whether in the digital age the concept of “targeting” (or some other legal theory) can be used as a basis for litigation jurisdiction over ICANN.

In other words we wonder whether a party, based where ICANN has no office, could successfully maintain a lawsuit against ICANN in a local court based on the argument that ICANN targeted them improperly for some action or on some other legal theory.

We are looking for general advice rather than a country-by-country analysis, being interested in trends and reasonable probability and not legal certainty at this point.

B. Choice of Law and Venue in ICANN’s Contracts. The Subgroup would also like to understand how ICANN handles choice of law and venue in ICANN’s contracts.

1. For each type of ICANN contract, please indicate whether the contract specifies (a) the choice of law or (b) the venue. Where either is specified, please indicate the jurisdiction and/or venue specified, and the reasons for these choices. Where ICANN does not specify choice of law or jurisdiction, please explain why.
2. For the contracts discussed above, please indicate whether there have been instances where different choices were specified, and whether this was requested by ICANN or by the other contracting party. If so, please list the other jurisdictions and/or venues that were used in these contracts.

Thank you very much for your assistance with these questions.

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<sup>3</sup> I.e., jurisdiction that arises from the defendant having certain minimum contacts with the forum jurisdiction so that the court may hear a case whose issues arise from those minimum contacts.

<sup>4</sup> I.e., the court or other forum is a legally appropriate forum for the dispute.