

Lightning-talk on Jurisdiction

CCWG-ACCT F2F Meeting @ ICANN 56

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Assessment from discussions

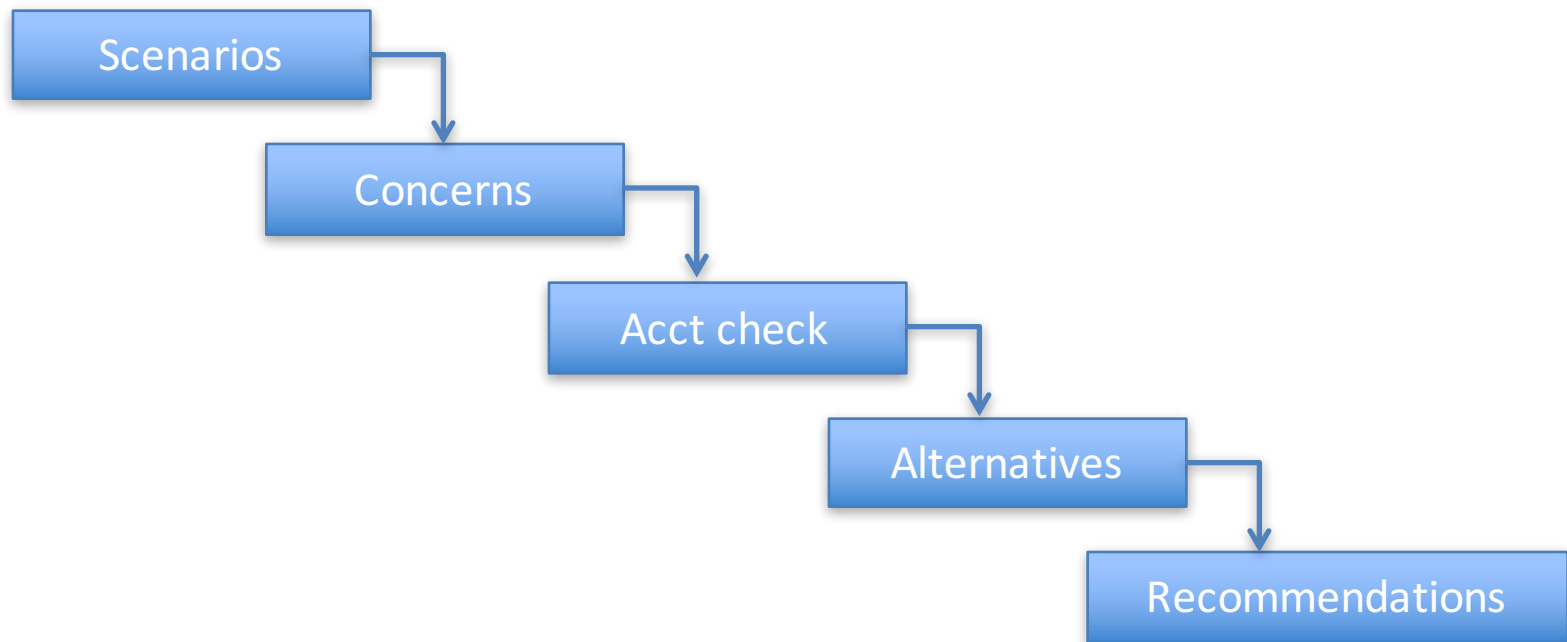
- Everybody has something to say about jurisdiction;
- Most of what is expressed is about preferences rather than facts or concepts;
- The debate may be loaded and not sufficiently fact based;
- Concerns (“irritations”) need to be taken into account – but do they have a solid foundation?;
- Expert input is key;

Recap (from the WS1 report)

- Jurisdiction is a multilayered issue;
- Broad concerns:
 - Influence that ICANN's existing jurisdiction may have on the actual operation of policies and accountability mechanisms;
 - Involving **primarily** the process of settlement of disputes (choice of jurisdiction and of the applicable laws but not necessarily the location where ICANN is incorporated).
- Consideration of jurisdiction in WS2:
 - Clarify all concerns regarding the multilayer jurisdiction issue;
 - Identify potential alternatives and benchmark their ability to match all CCWG-Accountability requirements.

Proposed way forward

- Scenarios based approach



Proposed way forward

- **Scenarios:** Identify all areas in which jurisdiction(s) influence(s)/interfere(s) in ICANN;
- **Concerns:** Which areas do represent major concerns for ICANN global stakeholders?
- **Accountability check:** Can identified concerns be addressed by post-transition Accountability mechanisms?
- **Alternatives:** If not, are there alternatives? Are these alternatives feasible?
- **Recommendations:** List of feasible alternatives and how to implement them.

Example 1

- **Scenario:** Government sanctions
- **Concerns:** Government sanctions represent unilateral and therefore undue interference in ICANN's global policies and operations
- **Evaluation:** Can ICANN and its community decide not to implement a governmental sanction that goes against ICANN policies?
- **Alternatives:** Can immunity on certain types of sanctions be sought within the jurisdiction where the sanction(s) are imposed?
- **Recommendations:** (...)
- ***Other examples:*** Approval of new laws and regulations.

Example 2

- **Scenario:** governing law for contracts between a gTLD registry and ICANN.
- **Concerns:** Can both parties choose at their own will the specific governing law for their contract?
- **Evaluation:** If not, can this be easily changed preserving ICANN's post-transition status?
- **Alternatives:** If not, are there feasible alternatives?
- **Recommendations:** (...)
- **Other examples:** *Enforcement of IRP decisions, Delegation/Redelegation of ccTLDs; etc.*

Tools

- **Jurisdiction subgroup:**
 - Diversity of participants (stakeholder groups and geography)
 - Diversity of Rapporteurs as well
- **Expert legal advice:**
 - California and US law experts
 - International law experts
- **Previous studies on Jurisdiction issues:**
 - E.g. “Internationalization of ICANN – Meeting the needs of the global Internet community of the future” (2009)