

---

GREG SHATAN: Hello and welcome to Meeting 7 of the Jurisdiction Subgroup of CCWG Accountability Work Stream 2, October 10, 2016.

First, anybody on audio only? It appears we have nobody on audio. We have one phone number in the participants list: 719-955-0889. Please identify who you are. You can do that in the chat, and we'll pick that up.

Any changes to Statements of Interest? Hearing none, it appears that everyone has retained their same interests as the last meeting.

Let us begin on this Columbus Day and Indigenous Peoples Day and Canadian Thanksgiving, and it may be other things to other people. The sixth day I believe of the High Holy Days as well.

You should have seen the e-mail I sent around yesterday on our work so far. Just to make sure, everyone, can you hear me? I see yeses in the chat.

[TIJANI BEN JEMAA]: I can hear you.

GREG SHATAN: Very good. Thank you very much. As I said, I sent around this e-mail to try to recap what we've done so far and decide how to deal with what we've done so far and a way forward. Hopefully, you've read that e-mail. If not, Item 2 of the Agenda pretty much recaps what is in the e-mail with regard to a work plan for now and in the immediate future.

---

*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

---

The first point in terms of dealing with the issue of changing ICANN's headquarters or jurisdiction of incorporation, the suggested approach is that we will not investigate it at this time. However, it is not off the table. If during the course of our work we identify an issue and that issue can't be resolved with any drastic solution, then potentially moving either the jurisdiction of incorporation or the headquarters, we'll revisit that point, including the concerns raised about that potential action. And we'll have that discussion in the context of a specified issue rather than discussing it in the abstract.

Some have pointed out it's premature potentially to discuss it or at least not as helpful as discussing it in the context of a potential issue. Furthermore, we don't know if we have any issues that might even meet the criteria that are set out in the test, if you will, for when we will look at the issue again.

I wanted to see before we move on – and the idea is to move on from this topic without further substantive discussion – but before we move on, is there any discussion of leaving this issue in this posture as opposed to dealing with it in some other manner? Seeing no hands and nothing in the chat, I will note that there appears to be no objection to this method of dealing with the topic of ICANN's headquarters and jurisdiction of incorporation.

With that, we can move on to Item 2B, which is the issue we've also been batting around for a while: confirming and assessing the gap analysis. Here again, things perhaps have not been as fruitful as they could have been or could be and hopefully will be in the future. Most of our discussion has been about scope of the gap analysis and defining

---

the gap analysis and trying to determine what the gap analysis was and to the extent that it was done and not in fact in any way confirming the substance of the gap analysis or assessing the gap analysis or anything actually on the substance. It was all what I think of as “shape of the table” discussions, for those of you old enough to remember the Vietnam peace talks.

Because this has really been about scope and not about confirmation and assessment of the gap analysis – and again discussing it somewhat without context since we haven’t really confirmed our understanding of the Multiple Layers of Jurisdiction or dealt with any substantive topics – I’m suggesting that the best way to deal with the gap analysis issue is also to put it to one side. And then we’ll revisit it after we work on some other issue of substance where there’s no issue about scope.

Before we move on from 2B, any disagreements, concerns, even affirmations if you will of that approach to the gap analysis issue? I’ll open the floor and the chat to any comments or questions people might have. Seeing none, we can move on.

Just to confirm in terms of approach, 2C, since we have begun discussion of the Multiple Layers of Jurisdiction and we have a document we’re working on, we should work with that. I know some of you have visited the Google Doc; others have not. The latest version of it has been sent around to the list a few minutes ago in PDF and Word form so that we can look at it on this call as well. That’s the current phase of our operations, if you will.

---

Then the next phase after basically confirming understanding of Multiple Layers of Jurisdiction would be to move on to an issue which is clearly in scope based on Annex 12, which is dealing with the effect or influence of ICANN's existing jurisdictions relating to resolution of disputes or settlement of disputes. Which I interpret to mean the choice of law and venue level of jurisdiction, which of course can be influenced by other levels of jurisdiction, but we're looking at the issues of resolution of disputes.

So I phrased that topic, if you will, in 2D "the influence of ICANN's existing jurisdictions relating to resolution of disputes (i.e., choice of law and venue) on the actual operation of policies and accountability mechanisms." It's my suggestion that after Multiple Layers of Jurisdiction, we move on to that question and issue and look at that as some of the substantive work of this group. Then we can have an actual issue and some resolution and discussion of potential recommendations, if any, [inaudible] ourselves. Then we can come back to some of the issues that may or may not be in scope. We may have some better ideas about scope once we've discussed our work in the context of a clearly in-scope issue.

That, 2A/B/C/D, is my proposed approach for our work. Of course, I'm not the boss. I'm just the rapporteur. So I want to determine if there are any concerns, issues, variations, or the like to taking this approach before we dive into it as such by moving on to Item 3. David McAuley?

---

DAVID MCAULEY:

Greg, thanks. Thank you for the e-mail this morning and the work that went into it. I've spoken before about our work here, and I'm one of those who believes that Paragraph 30 in Annex 12 is really the operative paragraph that we need to live with. I think Paragraph 2 in your Agenda there is a good one. I would prioritize things just in reverse: D, C, B, A.

I think that the document that we have in the Google Docs on the Layers of Jurisdiction is nice. But I actually think that in Paragraph 29 in Annex 12 in the final report where it talks about Layers of Jurisdiction, that's actually a declarative statement as opposed to an invitation for us to delve into it. Be that as it may, it's a good document. I tend to agree with Milton's comment that the NTIA reference is now [obviated], no longer needed.

I would encourage us to get through that document and to focus then on your Agenda on Paragraph 2D, the dispute resolution business. I think that's really the meat of where we're going. At least that's my opinion. Thanks very much.

GREG SHATAN:

Thank you, David. Just to briefly respond, and then Milton has a hand, one of the reasons I'd like to spend a little time – and not a lot of time, I agree – on the Multiple Layers of Jurisdiction issue is that I think we need to have at least a common understanding of what the different things are that get referred to as jurisdiction. This is not meant to be a document that discusses the potential effects of jurisdiction. Perhaps that wasn't clear enough when we started it, but we'll clarify that.

---

Since a lot of different things can be used to – when you use the word “jurisdiction” you may mean a number of different things. It would be good for us to understand what the Layers of Jurisdiction are and when we use the term jurisdiction or, better yet, use terms other than jurisdiction like “choice of law” or “venue” we know what we mean by them. So it’s really meant to be a stage setting exercise and not a whole substantive exploration of jurisdictional influences and effects. We’ll be getting around to those, clearly, in the context and within the limits of the scope of our work.

I think that’s the point of that document, so I wanted to clarify that. I think that fits, David, with what you’re saying. And I agree that substantively, having put aside A and B, we’ll be revisiting them. So I think the order will, in essence, reverse. Or at least we’ll go C, D, B, A and C is something we’ll probably revisit as a definitional document from time to time.

Milton?

MILTON MUELLER:

I just wanted to agree with you that we should begin with the Layers document. I think that’s a good clarifying exercise. I don’t think it should take too long. I think we can sort out most of those issues rather quickly.

But my one question is I’m not sure about the gap analysis. I’m not sure why you thought that was so contentious that it needed to be put aside. It’s clearly part of the scope document. There’s a reference to it. I’m

---

flexible on this question. I'm just curious as to what made you think that needed to be set aside.

GREG SHATAN:

The reason I did that is that our discussion of the gap analysis had so far been trying to decide what the gap analysis was and the limits and scope, and we weren't really getting to actually the assignment itself of confirming or assessing the gap analysis. And there were still gaps, if you will, and various positions as to what exactly this gap analysis was and what we would need to do to confirm it. And I felt that we were, as I said, getting stuck on "shape of the table" discussions.

I wouldn't characterize necessarily as contentious but one where there was a diversity of views, and I felt we might converge that diversity of views more quickly if we revisit after some more substantive work in applying the jurisdiction issue that's in front of us. I'm not so much throwing my hands up on it as feeling that we could deal with it more efficiently a little bit later.

I see Kavouss asked the same question in the chat, so hopefully I've answered that. Any other comments or questions on the approach? Seeing none, I think that takes us through Item 2 with an agreed approach or at least a sense that we will work on that whether you agree with it wholeheartedly or not.

I think that takes us to Item 3, which is the Multiple Layers of Jurisdiction document. So if we could put that up on the screen. If we could get that Multiple Layers of Jurisdiction document up that was sent to the list. Here we go. Somehow the PDF came up without any of the

---

changes. That's not good. I'm not sure why that happened. I had turned it into a PDF, and I had not checked the PDF itself to make sure that it looks like the Word document.

YVETTE GUIGNEAUX: Greg, this is host Yvette. If you just give me a moment, I can probably search through some things and try to find that PDF for you. Or do you just want to go ahead and work with what you've got here? I can do it either way you would like.

GREG SHATAN: Yeah, this isn't helpful because it doesn't have any of the work in it.

YVETTE GUIGNEAUX: Okay, then, just give me a moment and let me see what I can find on that other one, okay?

GREG SHATAN: Okay. The PDF I just sent today does have all the commentary in it, so that's the issue. This is an old PDF apparently.

YVETTE GUIGNEAUX: Okay, Greg, give me a moment. I'm going to go ahead and find that PDF. It will probably just take me a minute or two to get it up there, but I will [go ahead] and find that for you, alright?

---

GREG SHATAN: Okay. That should be in the e-mail I sent just before this call.

YVETTE GUIGNEAUX: Okay, I will find that.

GREG SHATAN: Okay, thanks.

YVETTE GUIGNEAUX: My apologies on the delay.

GREG SHATAN: All of you, if you have the document individually, you can look at it or even look at it in the Google Doc live. I've attempted to add based on my knowledge and understanding some of the additional definitional sections under each of these Multiple Layers of Jurisdiction and some of the facts or hopefully the most relevant facts as they apply to ICANN. Here we are. Okay. I think if you can blow that up a bit and maybe give scroll control. Everyone can zoom in for themselves.

So hopefully a noncontroversial definition of the Jurisdiction of Incorporation: "refers to the jurisdiction in which an entity is legally incorporated."

The facts as we know them right now: "ICANN is legally incorporated under the laws of California as a public benefit corporation (a type of nonprofit corporation)." This specific type is peculiar to California but

---

not particularly different from other types. The jurisdiction of incorporation is “reflected in ICANN’s Articles of Incorporation.”

As has been noted since we’re looking beyond just the jurisdiction of ICANN and PTI is also newly incorporated in California. The Bylaws require that. The Bylaws also require that when the time comes to incorporate the Empowered Community, it will also be incorporated in California.

Hopefully, there is nothing controversial there, but if anybody has any questions, additions, amendments, concerns, please say so. Seeing none, I’ll move on to the next one. Kavouss appears to believe that this is written in a confusing manner making it difficult to understand. Please feel free to go into the Google Doc and work on it. This is a collaborative working document. That is the way to deal with issues.

I don’t believe this has been copied from the text of Work Stream 1. I wrote this freehand with reference only to the Bylaws actually. Some parts of it came from Work Stream 1. The [inaudible] were influenced by Work Stream 1 but not anything under that.

Anyway, Jurisdiction of Headquarters Location, again a fairly clear concept. “This refers to the jurisdiction in which an entity’s headquarters is physically located.” ICANN, of course, is incorporated and has its headquarters location in the same U.S. state of California. This doesn’t always happen. In the U.S., there are many corporations that are incorporated in the state of Delaware yet have their headquarters in other places. This happens much less, however, with

---

regard to nonprofit corporations and may even be prohibited by law, but they are separate concepts.

Again, turning to the facts in B, “ICANN’s headquarters is in Los Angeles County, California.” Los Angeles County covers a lot of different cities, and Marina del Ray is one of them. Again, having the headquarters in Los Angeles county “is required by Section 24.1 of the ICANN Bylaws, which states ‘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.’” Again, fairly straightforward.

Again, the “new bylaws adopted 1 October are” – actually, the Bylaws go more to the state of incorporation and not to the headquarters location, so that C actually needs to be checked. We’ll deal with that in the Google Doc. Of course, collaborative documents when they’re in draft can sometimes have stuff in them that doesn’t quite work. But this has been corrected, so we’ll take care of that, noting this in the actual Google Doc.

I see a question in the chat from Kavouss: “Greg, I have no problem for these cases. Please advise if there is an issue outside these places, what would have happened?” I’m not entirely sure I understand the question, but at this point all we’re trying to do is define what the Multiple Layers of Jurisdiction are conceptually and what they are specifically for ICANN at this time. Questions of alternative jurisdictions, if any, or additional jurisdictions, as Jean-Jacques Subrenat said, we can reach at the appropriate time.

---

Number 3, and scrolling down because I think we've lost scroll control. If we could scroll down a bit. "Jurisdiction of Other Places of Physical Presence." This, again, conceptually refers to places where an entity maintains an ongoing physical presence, which would subject that entity to the laws of that jurisdiction on an ongoing basis. In other words, they would have to operate under the laws of that jurisdiction, at least with regard to operations physically in that jurisdiction.

As I noted, under U.S. law (which is where I'm most comfortable) "this would generally be referred to as maintaining a 'permanent establishment for the conduct of business'" or more simply an office that's permanent. So a "rent-a-desk," if you rented it permanently, might count. On the other hand, if you just walk into a [inaudible] office space for a day, that's not a permanent establishment.

But in any case, ICANN has permanent establishments in addition to its headquarters office which is also a hub, two others that are described as hubs are Singapore and Istanbul. As well, Beijing, Brussels, Geneva, Montevideo, Seoul, and Washington are engagement offices. And a comment, I believe that is from Matthew Shears. Sorry. This is a funny thing that happens. You lose the names but not the colors when you change from Google Docs to Word.

Nairobi is also listed as an engagement center. For some reason the page on the ICANN website I was looking at yesterday didn't list Nairobi, but that's probably the website's problem. So we can add Nairobi in there. These are, as far as I know, all of the permanent establishments of ICANN. If anybody knows of anything different or has any questions – David McAuley, I see your hand is up.

---

DAVID MCAULEY:

Thanks, Greg. I have a comment and a question. The comment is relating to Kavouss' comments. To the extent there's confusion here, actually I this is moving along fairly well, but I would say that some of the paragraphs in Annex 12 (at least in my opinion) are not all that clear and I think in some respects our work is cut out for us.

The question I have really with the bullets that you've gone through so far – the place and jurisdiction of incorporation and physical presence, etc. – it's my guess that in the places where ICANN has a physical presence that's not California, such as Belgium, Nairobi, Uruguay, whatever they might be, are also places of incorporation. Maybe Sam could enlighten us; I don't know. But I would expect that ICANN is incorporated in those areas. I'm just wondering if that's true and if it makes a difference to us as we go through this whole process. Thanks, Greg.

[TIJANI BEN JEMAA]:

I don't hear anything. Am I the only one?

GREG SHATAN:

Sorry. I forgot to unmute myself, so I just said something. I'll repeat it. I think it would be good to ask Sam for the facts on that. My understanding is that a corporation can only be incorporated in one place. If it's doing business in other places, typically it would need to register in some fashion. In the United States, if I incorporate a company in Delaware but its office is in New York state, I need to register with the

---

secretary of state as a so-called “foreign” corporation, even though foreign in this case means Delaware. So that’s not an additional place of incorporation. It is an additional place of physical presence. That, I believe, is how it works.

In other countries, I doubt that ICANN is actually incorporated in those other countries. But I see Sam has her hand up, so I can stop speculating and call on Sam. Sam, we don’t hear you yet. We’re not hearing Sam. At least, I’m not hearing Sam. I am using the audio bridge. I hope this is not one of those AC connect audio versus audio bridge issues we were experiencing last week. If somebody is listening on Adobe Connect, Sam says she’s on the audio bridge as well. So not hearing you...

UNIDENTIFIED MALE: Greg, I’m only on Adobe, and I can hear both. So I think we’re okay on that.

GREG SHATAN: You can hear both? Okay, well, I wasn’t hearing Sam.

UNIDENTIFIED MALE: I can hear you and I can hear the Adobe audio, so yes I can hear. But I’m not hearing Sam.

GREG SHATAN: Okay, fair enough. Okay, so we have an issue. So, Sam, why don’t you give it another shot. Sam is going to type. Hopefully, we will resolve

---

these audio matrix issues soon. “ICANN is not incorporated anywhere else.” Okay, thank you. Sam is typing some other stuff, so we’ll wait and see. “It is a registered foreign office or branch office equivalent in all other places.” Okay, that’s good to know and maybe a sign that I’ve mutated enough into being a corporate lawyer that I actually know a couple things. In any case, thank you, Sam. That’s helpful.

The next note that was put in here is I think from Jorge Cancio. It says, “I guess that any jurisdiction where ICANN has important assets may be considered from a ‘stress test’ scenario, i.e., the risk of interventions by any branch of the government of those jurisdictions directed to unduly influence the operations of the organization.” That may be beyond the scope of this definitional question, but when we get to the question of effects of jurisdiction maybe that’s something we can explore. I think the question there really goes to whether there are other assets beyond an office.

Again, I think at this point we’re just trying to define the different types of things that one could mean when one says “ICANN’s jurisdiction.” For instance, in Singapore, ICANN is physically present there, is subject to the laws of Singapore in the way it operates that office, and that’s a layer of the levels of jurisdiction that ICANN is part of or subject to.

The next layer – and now we’re getting I think to the first of two layers that really are going to go to the point that we’re going to be examining next – the Jurisdiction for the Interpretation of Contracts and other things, which is commonly called “Choice of Law” or “Governing Law” as it relates to a company.

---

This would include the law that's used to interpret contracts, both contracts with contracted parties and contracts with any other third parties ICANN enters into contracts with, and also the jurisdiction for interpreting actions of the Empowered Community.

It says here, "This refers to the jurisdiction whose laws will be used to interpret the rights and responsibilities of parties to a litigation, arbitration, or other dispute resolution mechanism." In many cases, this can be the same as the jurisdiction of incorporation or of headquarters location, and often jurisdiction or choice of law is driven by those location issues.

On the other hand, if we go to the second page here, choice of law can be specified in an agreement, and it often is. It does not have to be. Sometimes [inaudible] choice of law is defined in that there's one party that wants a particular law to be applied and they win the discussion of that in setting forth the agreement. If there's no choice of law specified in the agreement, then that's typically worked out at the time it becomes an issue between the parties. Or if they're in front of an arbitrator or a judge or a panel of some sort, that may be decided at the time.

There are reasons why it's good to decide choice of law, and it can also be potentially contentious. It's my understanding that a choice was made in the drafting and negotiation of the base Registry Agreement not to specify choice of law for the Registry Agreement, so what's the substantive law that's applied to it.

---

I see here is a note again from Jorge, “Under choice of law, I would highlight the following topics: potential flexibilities to attend and address the different legal frameworks applicable to where contracting parties are established, especially when there are potential conflicts between commitments derived from ICANN and such national/supranational legal frameworks, freedom to choose applicable law, etc.”

Again, I think this goes to effects of jurisdiction rather than defining what choice of law means. So perhaps these are either – I think the potential conflicts layer is actually discussed a little bit later in the agreement. So I think these, again, are beyond the scope of this definitional issue, definitional [document].

Tijani, you have your hand up.

TIJANI BEN JEMAA:

Thank you very much, Greg. Two things: first of all, we are speaking about the choice of the jurisdiction or of the law, if you want, to be made by the panel or by [inaudible]. But the problem is the choice of [inaudible] and the panel. This is the real issue.

Second, I am commenting on Jorge’s remark when he said freedom to choose applicable law, but who has the freedom to choose? The parties? The parties are always opposite, and they will not get an agreement for one choice. So who will have this freedom? Thank you.

---

GREG SHATAN: Thank you, Tijani. I think first of all, we're looking at this not at the point of a dispute, although that's one of the times when this comes up.

TIJANI BEN JEMAA: I don't hear you.

GREG SHATAN: Can you hear me now? Can everyone hear me? Hello?

UNIDENTIFIED MALE: I can hear you, Greg.

GREG SHATAN: Okay, thank you. Tijani, if you could go on mute when you're not speaking. As Jorge says in the chat, the parties may in agreements determine the applicable law as well as a venue and provider, which are actually the next level of the multi layers of jurisdiction.

So it's common but not required to identify the applicable law, and one of the reasons you do it in a contract when people are not belligerent with each other is to get that issue out of the way if you are in court. Because if you're in court, or even in front of an arbitrator, you may disagree if there are reasons to find the choice of law to be in contention, and then the judge or the panel will make the decision as to what the appropriate law is. And that can be avoided by making the choice earlier, but if not, that's where you find yourself in a dispute about choice of law.

---

[inaudible] when I was in law school, choice of law and conflict of law was considered one of those classes that you would break your brain if you took it, so I did not take it. In any case, any other questions or comments on what choice of law means and what ICANN – ICANN may have – I only looked at the base Registry Agreement since I didn't have that much time. It would be helpful if people could add any other information about choice of law that might be in any other ICANN documents that they're aware of, such as the Registrar Accreditation Agreement.

Moving on quickly because we are at the 15-minute mark for top of the hour, Jurisdiction for Litigation of Disputes is the next layer. This is a layer that we'll be dealing with in our substantive topic coming up. Here, this relates to disputes and enforcement of actions. This is referring to a couple of different things that maybe we would want to unpack.

It's the type of proceeding. For instance, whether you're limited to an arbitration or whether you can go to another venue, such as a court. Also in many cases, the provider of that proceeding, whether it's a particular arbitral panel or a provider of arbitration services or even a particular court. It may say that this needs to be litigated in the federal and state courts found in the County of Los Angeles, California.

The last thing is the physical location in which the proceeding takes place. This is all packed in under venue. For instance, the Registry Agreement, while it does not specify a governing law, does specify a method and place of jurisdiction and specifies arbitration using the International Chamber of Commerce in Los Angeles, California.

---

However, if the registry is an IGO, it specifies instead Geneva, Switzerland. I think this covers governmental entities as well as IGOs, it goes to Geneva and not L.A. That's my understanding.

Jeff Neuman notes in the chat, "It uses the American Arbitration Association rather than the International Chamber of Commerce arbitration rules." So we can add that to this document, please. And I invite others to collaborate in this collaborative Google Document.

Any questions here on this point? Again, a note here from Jorge, "Under venue or venues: multiplicity of venues and of providers of dispute resolution mechanisms (be it judicial or arbitration). Flexibilities as to standards, election of providers, language of proceedings, freedom to choose for the parties." These are all issues that could come up under venue, but whether they do come up at any point in our work, I'm not seeing where they would. But again, we're going to be talking about 4 and 5 extensively in our topic coming up.

David McAuley?

DAVID MCAULEY:

Thanks, Greg. I just wanted to mention that when there are discussions as we've seen in the chat that you mentioned about the venue being in Los Angeles, etc., not to mistake these contractual arrangements with an IRP. An IRP is a different kind of process. There it's almost designed to be venue-less, to take place online to the extent that it can. I just wanted to make that distinction. That doesn't necessarily apply in the case of IRPs. Thank you.

GREG SHATAN:

Thank you, David, that's very helpful. I hope you will help all of us by adding that to the Google Doc as well. I think here as well, and I think that Jorge does mention that in his note under venue, we need to consider the IRP and other internal redress mechanisms, not so much in terms of definition but in terms of perhaps effects, how well they address the needs of a global stakeholder community: composition, the proceedings, venue, providers, etc.

So that is that. Any comments or questions on jurisdiction for litigation of disputes? We've had some good additions and clarifications to this point. It's important that we have a good common understanding of 4 and 5 so that when we launch into the substance of our next point that they're at least reasonably well understood.

The last layer or the second-to-last layer, depending upon your opinion, is the Relationship of ICANN to National Jurisdictions for Particular Domestic Issues. That is, I guess, a different question in that we're not talking about a jurisdiction that applies to ICANN the corporation per se but that applies to its policies and the like. I have not really fleshed that out. There's probably quite a bit that can be said under there as well. And last – first, if there are any comments on Number 6, let me know.

Number 7, and this comes from Work Stream 1, is Meeting NTIA Requirements. There's a comment which I believe came from Milton Mueller, "We have met NTIA requirements. The transition is over; the NTIA contract has expired. NTIA approval or requirements are no longer a factor in anything we do. This layer should be deleted."

---

As my comment on that, and I'm not sure what hat I'm wearing and this is given that part of this was meeting those requirements in order to move on to the stage that we're in now – the post-transition ICANN – I think that there's probably at least an implicit understanding that we would continue to meet those requirements for some time and not change so that we fail to meet those jurisdictional requirement, at least not to make that change so quickly that one might regard it as a bait and switch. I think that's my view on that last point and why I think it still has currency afterwards.

I think at some point, who knows what that point might be, when ICANN is sufficiently far away from this transition it could make decisions that in essence violate the transition requirements. But at this point, I think at least it's a question of it may raise significant concerns if we were to violate those conditions – any of those conditions, not just jurisdictional conditions – at this time. That's certainly something we should discuss further. I see some back and forth in the chat on this point.

It would be good to put these notes into the Google Doc. One overall point that I made in my e-mail was that we need to really work from documents. We have this document here, which I will clean up. I'll probably take Jorge's notes, although perhaps going to the definitional topic per se, are worth preserving. Then when we get to the discussion of effects of jurisdiction. So I may copy this document and make a comment on that point.

I think that we should at least note here the arguments about whether the NTIA requirements is a proper layer. I see here Jeff Neuman says,

---

“Substitute Article 27 of the Bylaws for that requirement.” So that is a good point. I probably won’t clean the document up until tonight, but you can feel free to work in this document because I’ll copy it.

Tijani?

TIJANI BEN JEMAA:

Thank you, Greg. I tend to agree with Milton. The requirements were met, and the transition has happened. Those are the requirements for transition. The transition is already done. I don’t think we have to include it here as a layer because I don’t see what it will add to our jurisdiction [layers]. Perhaps I know that there are people who are afraid that we will perhaps go out of what is required from us, but I don’t think this will happen. I don’t think that adding this – it is not a layer of jurisdiction. In fact, [you are asking] about requirements. So I don’t know. I really feel that this is not...

GREG SHATAN:

Thank you, Tijani. Just to be clear, this is a layer that’s listed in the Work Stream 1 document, so the question is whether we should delete it from the list. Milton?

MILTON MUELLER:

Hello. Yes, I think we have to delete it. Even the idea of replacing it with Article 27, which makes some sense because Article 27 is alive whereas the NTIA requirements are not, but Article 27 is not about jurisdiction. It’s a Bylaw. So it’s not really relevant to this working group other than it tells us in Article 27B, whatever, that we’re supposed to talk about

---

jurisdiction somewhere. But it's about how we handle Work Stream 2 recommendations, not about legal or political jurisdictions. So I just don't see why we need this final layer, and as an advocate of simplicity and economy, I would like to delete anything I can. Thank you.

GREG SHATAN:

Thank you, Milton. I think I invite everyone to take a closer look at Article 27. I think particularly Article 27C, which discusses the process and criteria for considering CCWG accountability recommendations. But again, these criteria are not a layer of jurisdiction. Rather, they are something we're going to have to look at as we go through our work and see if we are meeting this process and criteria. And this process and criteria apply to all the subgroups, not just the Jurisdiction Subgroup.

I'm sympathetic to what Milton and Tijani are saying. I think we should discuss this further. I also do have the concern that if we were to turn around tomorrow and violate any of the NTIA requirements by which they allowed the transition to occur, that could be troublesome.

Again, it's not entirely clear – it's not clear from this document obviously – what the jurisdictional requirements were of the NTIA. So at best, this is vague, and at worst, it shouldn't be here. So we should look a little bit at that.

Tatiana says, "I think they are not requirements anymore but rather principles we want to follow." Milton says, "We can't change anything major tomorrow."

---

In any case, we've somehow reached the top of the hour. What I would like to encourage everyone to do is to think about the requirements of the agenda item that has been defined here as our next piece of work, which I need to get in front of me so that I recite it exactly. Or perhaps we can put the Agenda back up in the list. I'll start a Google Doc on this. Perhaps we can add to it.

The topic that we'll be turning to after we finish defining the Layers of Jurisdiction is the "influence of ICANN's existing jurisdictions relating to resolution of disputes (i.e., choice of law and venue) on the actual operation of policies and accountability mechanisms." If anybody wants to comment on this topic sentence, that would also be helpful. The phrasing here is somewhat influenced by what was in Annex 12, so it's kind of caught awkwardly a little bit between Annex 12 language and perhaps a more straightforward statement of the question.

Since we've reached the top of the hour, I will invite you all to continue to refine the Multiple Layers of Jurisdiction document and to get started on the question of the influence of ICANN's governing laws and venue, actual operations of policies and accountability mechanisms.

With that, we'll call this meeting adjourned, and we can stop the recording.

**[END OF TRANSCRIPTION]**