

Jurisdiction Questionnaire response analysis: Internet Governance Project

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Summary of the responses:

Question 1

IGP raises three issues:

- 1) Application for new gTLD registration for residents from countries subject to the US sanctions (OFAC issues). IGP raises the issues of the possibility of the OFAC license for providing services to specially designated nationals (SDNs) not being granted or non-transparency or delays in ICANN's processes of applying for such license and the absence of ICANN's commitment to transparency and responsiveness with regards to these issues.
- 2) Some registrars follow OFAC sanctions and regulation in the legal agreements with registrants even if they are not based in the US: the IGP makes an example of Gesloten.cw, a registrar based in Curacao and Olipso, a registrar based in Turkey.
- 3) The issue of high costs of money transfers between ICANN and countries under the sanctions.

Question 2

IGP refers to the court case brought by a group of terrorist victims in the US that had a writ of attachment against the state of Iran to show how the .IR, .SY and .KP can be affected by the ICANN's current jurisdiction. In the case the litigants asked for the seizure of ccTLDs as attachable property. During the litigation, those registered domain with .IR were felt like their businesses were at risk. OGP provides the analysis of the case with regard to the outcome: "the court showed deference to ICANN's mission which is to serve an international community. The court, while affirmed the district court judgment not to attach .IR, first respected the third party rights".

The respondent also raises the issue of awareness of ccTLDs about the ICANN's jurisdiction with regard to the law applicable to the ICANN organisation.

Question 3

IGP refers to the blog post, where more information and analysis is provided:

<http://www.internetgovernance.org/2017/01/13/icanns-jurisdiction-sanctions-and-domainnames/>.

The blog post provides more detailed analysis of the OFAC sanctions issues and ICANN jurisdiction and suggests some solutions, like for example, a general OFAC waiver, or contractually obliging registrars to investigate the possibility of receiving an OFAC license for providing services to sanctioned countries, prohibiting registrars from arbitrarily cancelling domain names without notice, clarification whether registrars based in other countries need to comply with OFAC and US laws.

Question 4 - No information provided

Analysis:

I strongly believe that the response from the IGP (as well as blog post the response refers to) provides several points that the Jurisdiction subgroup has to explore and give special attention to:

- OFAC sanctions (this was also raised in the reply from the Russian Telecom Ministry) and uncertainty and concerns associated with this issue.
- The case of .IR, .SY and .KP
- The possible solutions suggested in the IGP blogs post (see summary of the response to the Question 3).

I am not in a position to recommend any conclusions to the issues raised because the discussion shall be a group exercise. However, as a rapporteur for this response, I strongly recommend the issues to go through the group discussion.