

Jurisdiction Questionnaire response analysis:
Ministry of Telecom and Mass Communications of the Russian Federation
Submitted by: Tatiana Tropina

Summary of the responses:

A note: I am sorry that some of the responses I am referring to rather in lengthy way, because I think as the Ministry of Telecom and Mass Communications of the Russian Federation responded with what we actually wanted - real case that they consider relevant - it is with for the group to consider it in a more detailed way.

Question 1

The respondent states that their business, privacy or ability to use or purchase domain name-related services been affected by ICANN's jurisdiction. The response refers to the fact that ICANN, in particular, is a subject of the US regulations on the economic and trade sanctions program administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. The respondent refers to the provisions of the gTLD Applicant Guidebook and the document governing new registrar accreditation ("Registrar Accreditation: Application", section 4. "Application Process") and states that this can affect not only new top-level domain applicants (potential registries after application evaluation), but also companies seeking accreditation as ICANN registrar.

To illustrate how this provisions on OFAC sanctions can affect business, the Ministry of Telecom and Mass Communications of the Russian Federation brings up the case of sanctions implemented in accordance with the Executive Order 13685 of U.S. Administration (December 19th, 2014) prohibiting U.S. companies from supplying services and goods in the Republic of Crimea, doing business with individuals and entities located in the Republic of Crimea. This led to:

- Notification that Google Apps users located in Crimea access to Google services for accounts located in Crimea will get their services suspended within a week.
- Notifications from other U.S. technology companies like Amazon, Apple, Paypal; issuance of the Google chrome browser updates that web-sites and hosting registered by individual residents of this region will be removed.
- Announcements from several U.S. registrar companies (e.g., GoDaddy) that domain names of registrants from the Republic of Crimea will be removed from registries .com, .net, .org, .info, and others. The announcements referred to trade restrictions which do not allow registrars to do business with individuals and entities located in the Republic of Crimea.

The respondent expressed a strong belief that the WS2 Jurisdiction subgroup shall analyse not only incidents that happened and gather information about actual cases, but also analyse the potential risks related to jurisdiction.

Question 2, Question 3. - No information provided

Question 4a

The respondent doesn't provide any material. However, Russian Ministry of Telecom and Mass Communications of the Russian Federation expresses an opinion that since ICANN's policies and their implementation shall be in compliance with the California law, but top-level domain registries enter into

agreements with registrars individually, and registrars enter into agreements with the registrants in compliance with law of other countries, there will be conflicts between ICANN's policies and national law systems. As one of the examples, the respondent refers to the General Data Protection Regulation – GDPR 2016/679. Lastly, the response suggested to answer the questions why the issues related to domain name system and infrastructure shall be under the jurisdiction of a single state.

Question 4b

With regard to any alternative jurisdiction solutions, the respondent suggests that the following solutions:

- Governance of the DNS by the international law/ treaties
- Separate main ICANN's responsibilities over different jurisdictions
- Jurisdictional immunity under the US law

Analysis:

I recommend that every participant of the group reads if not the response, but at least the summary of it, and makes his or her own conclusion. However, I recommend the issue of trade sanctions and OFAC to be discussed in details and assessed by the group, as this issue comes up in more than one response and requires a serious consideration. No matter how we treat the political and geo-political issues that lead to the implementation of sanctions, the cases of the sanctions affecting businesses because OFAC and ICANN's jurisdiction requires the group to answer at least whether this should be taken into consideration and how. The issue of OFAC is also raised in the response of the IGP, which I am also analysing.

As to the alternative jurisdiction solutions: again, it is up to the group to continue the discussion and I think that as this issue being constantly raise we will have to come to it at some point if we realise that there are some serious risks coming from ICANN being incorporated in the US. However, I would like to note - as my personal opinion - that some of the proposed solutions very likely either do not meet the transition requirement (governance by international treaties) or probably impossible - e.g. If I am not mistaken the jurisdictional immunities under the US law could be given only to the international organisation, which, in turn, doesn't fit the transition requirements. This, however, shall be discussed anyway if the issue of alternative jurisdiction will be raised in the group.