

## DISTILLATION OF POSITIONS

<p>The Subgroup has decided to proceed with our work by assuming that ICANN's current status will not change (i.e., California will remain the jurisdiction of incorporation and headquarters location, and ICANN will not be immune from being sued in US courts), and then look at ways to mitigate issues arising from these aspects of ICANN's jurisdiction.</p> <p>If these aspects of ICANN's jurisdiction are to be reconsidered, it will be reconsidered in some other forum. Our report is not meant to prejudge that, but rather simply to begin with that as an assumption, and assess accountability within that framework.</p>	<p>The status quo is that ICANN's formation jurisdiction is in California, all the accountability mechanisms hang on that fact, and there is nothing in the basic documents here that requires us to undo Work Stream 1 accountability mechanisms. As a result, the formula for the group is (Stay in California) + (look at remediation tools if any are needed)</p>	<p>We need to stick to the mandate given to the CCWG Workstream 2 by the Chartering Organizations. The decision whether something is in or out of scope should be based on that mandate, should be considered in light of the specific facts of the case, and should be decided prima facie by the CCWG plenary. The Subgroup may reach ex-post, i.e., case by case its own understanding vis-a-vis a given case where there would be a question of in/out scope, but I don't think we should lose time on developing an ex-ante position of the Subgroup in general terms.</p>
<p>We should discuss what would be the potential impact as far as jurisdiction is concerned if the office continues to remain in California – we can discuss what will be the impact of being in California from the jurisdictional point of view.</p> <p>[To clarify, we will also be recommending solutions, as discussed above.]</p>	<p>(Suggested changes by Thiago)</p> <p>We should discuss what is the impact as far as jurisdiction is concerned as the office is in California – we can discuss what is the impact of being in California from the jurisdictional point of view.</p>	<p>(Clean version of Thiago's suggested changes)</p> <p>We should discuss what is the impact as far as jurisdiction is concerned as the office is in California – we can discuss what is the impact of being in California from the jurisdictional point of view.</p>
	<p>Work Stream 1 took into account the advice of our counsel that the models worked under California law. Work Stream 1 is based on that premise. Redoing Work Stream 1 would be horrible and impractical and would make the work of two years and thousands of hours non-implementable, maybe putting the whole transition in question. Being or not being in California was something that was decided in Work Stream 1 and at this stage no one proposes to redo Work Stream 1.</p>	<p>We could, with the agreement of the Co-Chairs of the CCWG-accountability, raise the question to the legal advisors, asking in the event there is a situation where it is decided to move ICANN from California to elsewhere, what would be the impact on the entire Work Stream 1, the new Bylaws and all of elements of the transition.</p>