Proposed Issues Submitted by Subgroup Participants: Draft for Review in Meeting of August 30 2017

Proposed Issues: Major Topics	Individual Proposed Issues	Submitted by	Notes
OFAC	• ICANN contractual language in RAA relating to OFAC licenses • Applicability of OFAC to Non-US Registrars • Application of OFAC restrictions by Non-US Registrars • Approval of gTLD registries • Cancellation by some registrars of domain name registrations owned by registrants in countries subject to OFAC	Farzaneh Badii, Kavouss Arasteh	Context: Study of general licenses, ICANN's response to need for specific licenses with registries and registrars will be discussed as potential solutions
Provisions relating to choice of law in certain ICANN Agreements	• Registry Agreements do not have a provision stating the governing law of the agreement • Registrar Agreements do not have a provision stating the governing law of the agreement • Arbitration of Registry Agreement: Lack of choice in arbitral body and jurisdiction of arbitration • Lack of governing law provisions could lead to courts more likely choosing their own law as governing law	Raphael Beauregard-Lacroix, Jorge Cancio	
U.S. court jurisdiction over ICANN activities	• Jurisdiction over ICANN's activities that (1) comply with GAC advice or (2) are otherwise based on powers recognised onto Governmental authorities according to ICANN Bylaws • ICANN policy development and policy implementation activities which ICANN performs in the global public interest are subject to litigation in US courts	Thiago Jardim	ICANN activities "based on powers recognised onto Governmental authorities according to ICANN Bylaws" may relate mostly to ccTLDs and if so it should be considered as part of those potential issues.

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Non-interference of international actors in ICANN's core activities	• States (and International Organizations) should refrain from exercising concurrent jurisdiction respecting ICANN's special role and governance model.	Erich Schweighofer	Raised in the context of "the issue on partial immunity"
US's executive, regulatory, legislative and judicial jurisdiction over things ICANN and the unique solution of general immunity under the US International Organizations Immunities Act	• US executive and regulatory powers over ICANN • Domain seizures by US executive agencies like US customs: Could these potentially be applied to gTLDs? • US legislature's unlimited power over ICANN • US's courts' judicial writ over all aspects of ICANN: Almost any US court can take up for its judicial consideration whether ICANN works within each of such applicable law or not.	Parminder	Discussed in the context of general immunity, as follows: "The only solution there is a general immunity under the US International Organizations Immunities Act, with proper customization and exceptions for ICANN to enable to be able to perform its organizational activities from within the US. The chief exception I understand would be the application of California non-profit law."
US Courts may hear disputes regarding Community TLDs	• US Courts may hear disputes regarding the management of a Community TLD (e.g., .swiss, .music., .gay) • US Courts may hear disputes relating to Community TLDs	Jorge Cancio, Thiago Jardim	At least partially related to choice of law issue. Subset of potential issue of US Courts jurisdiction generally
Making sure that the hearings of the IRP are location-neutral		Jorge Cancio	Majority of "meetings" of the IRP are virtual. In person meetings would be rare and at the discretion of the panel - No explicit solution proposed
Non-interference of States in ccTLDs of other States	• Courts overriding ccTLD delegations • "In Rem" jurisdiction of US courts over ccTLDs • Enforcement measures by domestic agencies that interfere with ICANN's ccTLD management	Kavouss Arasteh, Farzaneh Badii, Thiago Jardim	Subset of potential issue of US Courts generally. There appear to be no examples of this. The ccNSO will have a PDP on developing a dispute resolution system, which could address this as these are excluded from IRP as requested by the ccNSO (similar to ASO)

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California not-for-profit incorporation and headquarters location have a positive effect on ICANN accountability mechanisms and operations.	• Questioning and attempting to limit ability of third parties to litigate against ICANN in US courts undermines Work Stream 1 accountability mechanisms • Work Stream 1 mechanisms take advantage of specific aspects of California law • Questioning and attempting to limit ability of third parties to litigate against ICANN in US courts and previously existing ICANN me • Application of US law to ICANN's actions controls ICANN and subjects it to the rule of law: limiting this makes ICANN less accountable	Brian Scarpelli	Related to US court issues, also legislative and regulatory issues.