

Jurisdiction Meeting #46 (13 September 2017 @ 13:00 UTC)

Attendees:

Sub-group Members: Avri Doria, Cheryl Langdon-Orr, David McAuley, Erich Schweighofer, Farzaneh Badii, Finn Petersen, Greg Shatan, Griffin Barnett, Herb Wayen Jorge Cancio, Kavouss Arasteh, Paul Rosenzweig, Philip Corwin, Raphael Beauregard-Lacroix, Thiago Jardim (15)

Observers/Guests: Thomas Rickert

Staff: Bernard Turcotte, Berry Cobb, Brenda Brewer, Meghan Healy

Apologies: Brian Scarpelli

*** If your name is missing from attendance or apology, please send note to acct-staff@icann.org ***

Transcript

- [Word Doc](#)
- [PDF](#)

Recording

- [Adobe Connect Replay](#)
- [mp3 Replay](#)

Agenda

1. **Welcome**
2. **Review of Agenda (2 minutes)**
3. **Administration (1 minute)**
 - 3.1. Changes to SOIs
 - 3.2. Identify Audio Only and Phone Number Participants
4. **Issues and Proposed Issues (45 minutes)**
 - 4.1. Continued Discussion of "OFAC Recommendation First Draft"
 - 4.2. Continued Discussion of Next Set of Proposed Issues: "Provisions relating to choice of law in certain ICANN Agreements":
 - 4.2.1. Registry Agreements do not have a provision stating the governing law of the agreement
 - 4.2.2. Registrar Agreements do not have a provision stating the governing law of the agreement
 - 4.2.3. Arbitration of Registry Agreement: Lack of choice in arbitral body and jurisdiction of arbitration
 - 4.2.4. Lack of governing law provisions could lead to courts more likely choosing their own law as governing law
 - 4.2.5. provisions regarding the venue for hearing disputes in registry agreements are limited to one specific venue, with flexibility allowed only in contracts with Governments and other special cases
 - 4.3. Review of Revised Proposed Issues List
5. **Review of Schedule and Timeline (5 Minutes)**
6. **AOB (5 Minutes)**
7. **Adjourn (next meeting 18 September 1900UTC)**

Raw Captioning Notes

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- [Word Doc](#)
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Decisions:

- Continue with choice of law discussion at the start of the next meeting.

Action Items:

- [GS to develop a plan going forward for the next few remaining calls and publish this on the list this week.](#)

Requests:

- Participants to review OFAC recommendation and comment on list.

Documents Presented

- [OFAC Recommendation First Draft](#)
- [Master List of Proposed Issues Submitted by Subgroup](#)

Chat Transcript

Brenda Brewer: (9/13/2017 07:37) Good day! Welcome to Jurisdiction Subgroup Meeting #46 on 13 September 2017 @ 13:00 UTC!

Brenda Brewer: (07:38) When not speaking, please mute your phone by pressing *6 (star 6). To unmute, *6. This call is recorded.

Brenda Brewer: (07:38) Reminder to all, for captioning and transcription, please state your name before speaking and speak slowly. Thank you!

Herb Waye Ombuds: (08:00) Hello everyone

Bernard Turcotte - ICANN: (08:01) Hello all

Paul Rosenzweig: (08:02) Is audio on?

David McAuley: (08:02) I am #4154

Paul Rosenzweig: (08:06) I am here and having audio trouble, but my comment is pretty clear...

Thomas Rickert: (08:07) Hi all, sorry for being late. Can you please add me to the list of attendees?

Brenda Brewer: (08:07) Thank you, Thomas.

David McAuley: (08:07) on mute?

Thomas Rickert: (08:07) Thanks, Brenda!

David McAuley: (08:08) maybe we lost Greg

Greg Shatan: (08:08) Line dropped.

Paul Rosenzweig: (08:09) Ahh ... the joys of a world wide organization and virtual meetings!!

Bernard Turcotte - ICANN: (08:09) Greg are you coming back in we cannot hear you

Raphael Beauregard-Lacroix: (08:10) yes

Bernard Turcotte - ICANN: (08:10) asking for questions or comments

Farzaneh Badii: (08:15) so we said not to give legal advice

David McAuley: (08:15) Agree w/Greg on ICANN's inability to render legal advice to other parties

Farzaneh Badii: (08:15) it could provide a clarification

Farzaneh Badii: (08:15) you have the wording in the document

Farzaneh Badii: (08:16) The fact that it is in their ToS is concerning

David McAuley: (08:16) Clarification that does not amount to legal advice sounds reasonable

Thomas Rickert: (08:18) Registrars might be subject to OFAC just because they work with US banks e.g.

Thomas Rickert: (08:18) That is where the language might come from.#

David McAuley: (08:19) Interesting point @Thomas

Paul Rosenzweig: (08:20) I suppose they might also WANT to apply OFAC even though they don't need to for some business reason. But this seems clearly to me to be mistake and we should definitely warn against error

Kavouss Arasteh: (08:20) Greg,

Kavouss Arasteh: (08:20) If the language is ambiguous or interpretable I have difficulties with that

Kavouss Arasteh: (08:21) Pls clarify the issue

Thomas Rickert: (08:21) I think a general remark encouraging contracted parties to check applicability and sope of OFAC impact might be valuable (without going as far as offering legal advice)

Farzaneh Badii: (08:21) I agree with Thomas and Paul.

Kavouss Arasteh: (08:22) I have difficulties to talk about specific lisenca as I do not really sue of its application since such specific lisenca may solve one or few problems among other problems but not all

Kavouss Arasteh: (08:23) what we mean by speific parties?

Bernard Turcotte - ICANN: (08:29) Time Check - 30 minutes left in call

Farzaneh Badii: (08:30) but we can't bind them ... what could we put other than encourage

Cheryl Langdon-Orr (CLO): (08:31) indeed Farzi

Paul Rosenzweig: (08:32) +1 We can't bind anyone. The only one we can really directly influence is ICANN.

Cheryl Langdon-Orr (CLO): (08:33) "Remind" seems a good choice of language

Jorge Cancio (GAC Switzerland) 2: (08:43) Dear all, as said in the last call the main thought is to reduce uncertainty, and clarify that the parties to the registry agreements have an effective freedom to choose the applicable law and to apply a principle of subsidiarity that may reduce potential conflicts with the national laws where they are based.

Jorge Cancio (GAC Switzerland) 2: (08:43) Thanks Kavouss :-)

Raphael Beauregard-Lacroix: (08:44) yes

Paul Rosenzweig: (08:44) Yes

Bernard Turcotte - ICANN: (08:45) Time Check - 15 minutes left

Bernard Turcotte - ICANN: (08:45) in call

Bernard Turcotte - ICANN: (08:48) Kavouss old hand?

Jorge Cancio (GAC Switzerland) 2: (08:51) I feel the parties would be best placed to exercise that effective freedom

Jorge Cancio (GAC Switzerland) 2: (08:52) we should not enter into implementation :-)

Herb Wayne Ombuds: (08:52) I must drop out to prepare for another call. Have a great day everyone.

David McAuley: (08:52) sounds like that

Cheryl Langdon-Orr (CLO): (08:52) trial?

David McAuley: (08:52) mystery guest

Paul Rosenzweig: (08:52) I agree Jorge -- I fear though that your solution makes implementation difficult

Raphael Beauregard-Lacroix: (08:52) hm I might have a mic problem

Farzaneh Badii: (08:52) oh Kafka is around

David McAuley: (08:52) LOL

Paul Rosenzweig: (08:52) LOL

David McAuley: (08:53) Kafka trail?

David McAuley: (08:53) trial, that is

Raphael Beauregard-Lacroix: (08:53) ok I have audio problems ..

Jorge Cancio (GAC Switzerland) 2: (08:53) @Paul: I feel we may agree quite a lot...

Brenda Brewer: (08:53) Raphael, I have muted your line. When your mic issue is corrected, you may press star 6 to unmute

Paul Rosenzweig: (08:53) @Jorge -- this time we actually do!

Raphael Beauregard-Lacroix: (08:54) What I wanted to say: I mostly agree with Paul, and I will continue to answer comments on the list, and I also think we should reach out ot gTLD registries since none has shown up on the list to provide comments

Thomas Rickert: (08:55) I brought up the issue of applicable law in the GNSO council a few years back and was told it was not for them.

Raphael Beauregard-Lacroix: (08:55) ah ok. hm.

Jorge Cancio (GAC Switzerland) 2: (08:55) (@Raphaël: actually the ".swiss" made a submission - which I'm advocating for...)

Bernard Turcotte - ICANN: (08:56) time check - 5 minutes left in call

Raphael Beauregard-Lacroix: (08:56) yes Jorge! but it would be nice to have as many as possible and Greg's calls on the list have mostly been left unanswered

Thomas Rickert: (08:56) I guess we should make recommendations. Implementation thereof certainly needs to follow the rules in the RY and RR agreements

Thomas Rickert: (08:57) I still like the idea of offering a limited numbers of jurisdictions for different regions of the world.

Erich Schweighofer: (08:57) Regional arbitration centres may be the best solution.

Thomas Rickert: (08:58) @Erich - not only arbitration, but also contract language itself.

Raphael Beauregard-Lacroix: (08:58) we should make the difference between governing law and forum tho. These are two issues with eventually two different solutions

Jorge Cancio (GAC Switzerland) 2: (08:58) @Raphael: absolutely...as a "promoter" of the questionnaire-effort I would have expected more registries and contracted parties making inputs... but I guess that commercial interests/negotiations are very sensitive

Thomas Rickert: (08:58) There are a number of clauses in the agreements that are void under EU law.

David McAuley: (08:58) # of days between now and Oct 11 is even less

Raphael Beauregard-Lacroix: (08:59) Thomas: yes I would be of that opinion too ;) so that is why I thought keeping Cali law was a better solution overall in my proposal

Raphael Beauregard-Lacroix: (09:00) then gdoc is better I suppose?

Cheryl Langdon-Orr (CLO): (09:00) makes sense Greg

Thomas Rickert: (09:00) Raphael, that is the simplest solution and the most transparent one. Whether it is the best option for the contracted parties I am not sure :-)

David McAuley: (09:01) I work for a registry but my preference for comment on gov law clause is to reach out to RySG

Raphael Beauregard-Lacroix: (09:01) thanks David

Raphael Beauregard-Lacroix: (09:01) Thomas, yes but that is not for us to say I suppose!

Cheryl Langdon-Orr (CLO): (09:01) thanks everyone, bye ð for now...

David McAuley: (09:01) Thanks Greg, thanks all, good bye

Farzaneh Badii: (09:02) Thanks all. bye

Thomas Rickert: (09:02) As David said, reaching out to them is the way to go.

avri doria: (09:02) bye

Thomas Rickert: (09:02) BFN

Bernard Turcotte - ICANN: (09:02) bye all

Raphael Beauregard-Lacroix: (09:02) bye

Erich Schweighofer: (09:02) Bye

Jorge Cancio (GAC Switzerland) 2: (09:02) thanks and bye all!

Thomas Rickert: (09:02) Thanks Greg, well done!