

Jurisdiction Meeting #39 (26 July 2017 @ 19:00 UTC)

Attendees:

Sub-group Members: Avri Doria, Cheryl Langdon-Orr, Christopher Wilkinson, David McAuley, Farzaneh Badii, Finn Petersen, Greg Shatan, Griffin Barnett, Jeff Neuman, Kavouss Arasteh, Milton Mueller, Phil Marano, Philip Corwin, Thiago Jardim (14)

Observers/Guests: /

Staff: Bernard Turcotte, Berry Cobb, Brenda Brewer

Apologies: Herb Wayne

*** 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. **Review of decisions and action items from last call (2 minutes)**
 - 4.1. Decisions:
 - 4.1.1. Will begin formal discussion of the issues list on the next call.
 - 4.1.2. Request ICANN Legal to present on OFAC and the fact that there is no jurisdiction in the Registry or Registrar contracts.
 - 4.2. Action Items:
 - 4.2.1. GS – to send email to questionnaire respondents.
 - 4.2.2. GS – To request ICANN Legal to present on OFAC and the fact that there is no choice of jurisdiction (i.e., choice of law or venue) in the Registry or Registrar contracts.
 - 4.3. Requests:
 - 4.3.1. (renewed) Participants asked to include any issues they have on the List of Proposed prior to the July 26 call. <https://docs.google.com/spreadsheets/d/1zAMj3Oz8TEqbjauOyqt09Ef-1ada9TrC7i60Mk-7al4/edit#gid=0>
5. **Subgroup Timeline (10 minutes)**
 - 5.1. Review of Schedule for WS2
 - 5.2. Review of Subgroup Timeline
6. **Review and discussion of the List of Proposed Issues for Jurisdiction Subgroup Consideration (30 minutes)**
 - 6.1. Begin substantive discussion of issues
 - 6.2. List is at: <https://docs.google.com/spreadsheets/d/1zAMj3Oz8TEqbjauOyqt09Ef-1ada9TrC7i60Mk-7al4/edit#gid=0>
7. **Review of ICANN Litigation (10 Minutes)**

7.1. Review of Status and Progress: <https://docs.google.com/document/d/1oo9oDJuuxFz1UUNaBfHeor7HPhJ5XcRHFTq3hjRltOM/edit?usp=sharing>

7.1.1. Outstanding reviews to be presented to Subgroup

7.1.2. Status of outstanding litigations to be analyzed

7.2. Presentation of completed reviews (if any)

8. Questionnaire Responses (10 minutes)

8.1. Review of Status and Progress

8.1.1. Status of Outstanding Questionnaire Responses to be analyzed

9. AOB

10. Adjourn

Raw Captioning Notes

Disclaimer: This rough edit transcript, which may contain missing, misspelled or paraphrased words, is only provided for your immediate review and is not certified as verbatim and is not to be cited in any way.

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

Decisions:

- Lack of choice of law in the ICANN registrar agreements and in the GTLD registry agreements should remain on the draft issues list with the understanding that the sub-group may decide not to pursue these.

Action Items:

- Staff – Re-Distribute to the sub-group list the original contributions from ICANN Legal regarding the choice of law in the registry and registrar agreements.

Requests:

- Sub-group is requested to work on the issues using the list prior to the next meeting.

Documents Presented

- [Issues for Jurisdiction Consideration v1.1 - 07262017](#)
- [WS2 Revised timeline](#)
- [ICANN Litigations Sign-Up Sheet 07262017](#)

Chat Transcript

Brenda Brewer: (7/26/2017 13:27) Hello! Welcome to WS2 Jurisdiction Subgroup Meeting #39 on 26 July 2017 @ 19:00 UTC!

Brenda Brewer: (13:27) If you are not speaking, please mute your phone by pressing *6 (star 6). This call is recorded.

Brenda Brewer: (13:28) Reminder to all, please speak slowly and state your name before speaking for the Captioner. Thank you!

Arasteh Kavouss: (13:45) Dear Brenda

Arasteh Kavouss: (13:45) Hi Brenda

Brenda Brewer: (13:45) Hello Kavouss!

Arasteh Kavouss: (13:46) I am in Geneva for call

Brenda Brewer: (13:46) so, your usual number then?

Bonnie-CART: (13:48) Hi, Brenda! Can you please tell me who the Rapporteur will be for this meeting?

Brenda Brewer: (13:48) Greg Shatan is Rapporteur today.

Bonnie-CART: (13:48) Thank you very much!

Brenda Brewer: (13:55) Kavouss, calling you now, no answer.

Greg Shatan: (13:59) Hello, all.

David McAuley: (13:59) dialing in

David McAuley: (14:01) I am #4154

Brenda Brewer: (14:01) Thank you, David.

Milton Mueller: (14:01) sounds good

Brenda Brewer: (14:01) Kavouss, dial out to you was no successful. Please reply.

Arasteh Kavouss: (14:06) Brenda

Arasteh Kavouss: (14:06) I am in Gene ga,

Arasteh Kavouss: (14:06) WAITING to be calléed

Arasteh Kavouss: (14:07) Pls advise to dial me up

Brenda Brewer: (14:07) I have called Geneva twice, Kavouss.

Arasteh Kavouss: (14:07) GS

Arasteh Kavouss: (14:07) I am here in Genecva

Arasteh Kavouss: (14:07) Pls adviase to be dialed

Bernard Turcotte - ICANN: (14:07) hand

Arasteh Kavouss: (14:08) Bernie

Milton Mueller: (14:08) great thanks, Bernie

Arasteh Kavouss: (14:08) Pls note that I am waiting here to be called

Milton Mueller: (14:08) I have not lost interest in this group

Arasteh Kavouss: (14:09) Yes but pls advise to dil me up

Arasteh Kavouss: (14:09) I am anot connected why?

Bernard Turcotte - ICANN: (14:09) We are trying Kavouss

Farzaneh Badii: (14:09) is the phone plugged in?

Brenda Brewer: (14:10) Kavouss, please see private chat from me...

Arasteh Kavouss: (14:10) PLEASE dial me up

Arasteh Kavouss: (14:10) tks

Bernard Turcotte - ICANN: (14:10) @David is in the Action item

David McAuley: (14:11) sorry - i missed that then

Bernard Turcotte - ICANN: (14:11) But let u s remember that ICANN have written to us on this in the past if I remember correctly

Arasteh Kavouss: (14:11) gREG

Thiago Jardim: (14:11) Bernard, can you provide us a link for that ?

Arasteh Kavouss: (14:11) bRENDA

Arasteh Kavouss: (14:12) Please kindly advise what is going obn

Bernard Turcotte - ICANN: (14:12) @Thiago will do after this call

Arasteh Kavouss: (14:12) bRNIE

Bernard Turcotte - ICANN: (14:12) @Kavouss yes

Thiago Jardim: (14:12) Thanks,

Arasteh Kavouss: (14:12) 0041 79 32xx xxxx

Milton Mueller: (14:13) ok let's move on

Arasteh Kavouss: (14:13) 20 MINTS ago I informed you that I am in Geneva ,usual nNumber

Milton Mueller: (14:13) didn't we already discuss this?

Brenda Brewer: (14:13) This is the number I am dialing, Kavouss. I am sorry, that you are unable to connect. I have dialed your number three times.

Arasteh Kavouss: (14:13) Why

Arasteh Kavouss: (14:15) PLS DIAL 0041 22 73xxxx

Bernard Turcotte - ICANN: (14:15) @Kavouss - I have just tried that number and I get an error message in German

Milton Mueller: (14:16) We can ask them whatever we want

Farzaneh Badii: (14:16) do we have to submit questions or will we invite them to attend the meeting

Bernard Turcotte - ICANN: (14:17) @Farzaneh - looking to have them attend a meeting in person to answer questions

David McAuley: (14:17) agree w Greg that we should identify questions beforehand, to some extent at least

Milton Mueller: (14:17) May I remind the chair that he scheduled 2 minutes for this agenda item and we are now on minute 10

Thiago Jardim: (14:18) ok

Thiago Jardim: (14:18) thanks

David McAuley: (14:19) yes

Milton Mueller: (14:19) yes

Milton Mueller: (14:19) Really?

Milton Mueller: (14:19) We are NOT discussing OFAC, we are discussing the simple matter of inviting ICANN to discuss it

Milton Mueller: (14:21) That is what will happen when we get ICANN into the meeting to discuss OFAC

Milton Mueller: (14:21) Ask your questions then, Kavouss

David McAuley: (14:22) agree w/Greg - first let's hear ICANN

Arasteh Kavouss: (14:23) dEAR Professor,

Arasteh Kavouss: (14:23) Good Afternoon or good evening

David McAuley: (14:23) another great graphic Bernie

Arasteh Kavouss: (14:24) May you kindly be patient and allow those people who are victim of OFAC

Arasteh Kavouss: (14:24) to ask questions

David McAuley: (14:25) 2 comment periods look impossible for sure

David McAuley: (14:25) considering where we are now

Arasteh Kavouss: (14:25) David ,

Arasteh Kavouss: (14:25) Let us not to hurry

Arasteh Kavouss: (14:25) I repeta what

Milton Mueller: (14:26) Look at the agenda. If we waste time talking about the agenda, we will not have time to discuss the list of proposed issues, which includes OFAC. This subgroup repeatedly spends all its time on administrivia and that makes it difficult to discuss substantive issues

Brenda Brewer: (14:26) Kavouss, muted your line as typing was being heard. Thank you.

Arasteh Kavouss: (14:27) ok

David McAuley: (14:27) agree w/Bernie - June 2018 is a hard deadline

Arasteh Kavouss: (14:29) I repeat, ICANN is kindly requested to provide full description of the OFAC who it has implemented ? WHAT WAS INSTRUCTION FROM ntia, What was the reply from

avri doria: (14:29) ok, just checking to make sure that was not a Organization decsion

Arasteh Kavouss: (14:30) NTIA wHAT WAS THE REACTION OF icanb to that

avri doria: (14:30) NTIA is not part of the decsion making any longer at this point

Bernard Turcotte - ICANN: (14:30) @Avri - no WS2 decision but WS2 has committed to completing by the end of June 2018 and the realities of how long things take are simply being presented here for your information

Arasteh Kavouss: (14:30) what was the difficulties that ICANN faced in implementing that

avri doria: (14:31) Bernie, becomes worrisome when it starts to sound like issue not solved by then are no longer part of the problem set.

Bernard Turcotte - ICANN: (14:31) Time check - 30 Minutes left in call

Milton Mueller: (14:31) agree with Avri

Milton Mueller: (14:32) These are great questions you can ask ICANN when they are actually on the call, Kavouss

Arasteh Kavouss: (14:34) tHANK YOU milton,

Bernard Turcotte - ICANN: (14:35) @ Avri - if things cannot be completed in WS2 the confirmations from several SOACs for the extension for WS2 to then end of June 2018 stated that they would not support any further extensions. If this is the case other mechanisms would have to be identified to address any remaining questions.

Bernard Turcotte - ICANN: (14:36) Kavouss first

Philip Corwin: (14:37) ICANN is a US corporation and as such, and given their excellent inside and outside counsel, they would be aware that OFAC regulations prohibit entering into contracts with entities on the OFAC list unless a waiver is first requested and obtained. I don't think the USG goes around telling companies that they should comply with this or that law. But let's see what ICANN says.

Thiago Jardim: (14:37) US courts decide that.

Milton Mueller: (14:37) This is not the issue we are discussing now, Kavouss

Milton Mueller: (14:37) Let us focus on the Governing law for registry agreements

Milton Mueller: (14:38) IGP has added the ccTLD issue to the list of proposed issues - we can discuss it when we get to it

Jeff Neuman: (14:38) https://urldefense.proofpoint.com/v2/url?u=https-3A__www.icann.org_resources_pages_application-2D2012-2D02-2D25-2Den&d=DwlFaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=kbiQDH54980u4nTPfwdloDLY6-6F24x0ArAvhdeDvvc&m=8lhBRVPErXyFCabvflc3I9h-e0nmmKqcGoU7zOJpell&s=aYxOSJU8qPDY7bYCcNCvY6AemS2ttazhj8yziVbIIISA&e= , Terms and Conditions Section 4 deals with OFAC

Bernard Turcotte - ICANN: (14:39) Jeff with the comma the link is broken

Jeff Neuman: (14:39) https://urldefense.proofpoint.com/v2/url?u=https-3A__www.icann.org_resources_pages_application-2D2012-2D02-2D25-2Den&d=DwlFaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=kbiQDH54980u4nTPfwdloDLY6-6F24x0ArAvhdeDvvc&m=8lhBRVPErXyFCabvflc3I9h-e0nmmKqcGoU7zOJpell&s=aYxOSJU8qPDY7bYCcNCvY6AemS2ttazhj8yziVbIIISA&e=

Arasteh Kavouss: (14:40) Why there is no a governing law in the registry contract

Arasteh Kavouss: (14:40) IF there is no arrangement we need to address that

Arasteh Kavouss: (14:42) Greg , lack law in the Registry Contract is an important issue which must be addressed

David McAuley 2: (14:42) i had to re-enter adobe, was thrown out

David McAuley 2: (14:43) Thanks for link, Jeff

Bernard Turcotte - ICANN: (14:45) Time Check - 15 minutes left in call

Milton Mueller: (14:45) That is interesting, Jeff - but if no choice of law is specified, how are disputes resolved?

Jeff Neuman: (14:45) See Section 5.9 here: https://urldefense.proofpoint.com/v2/url?u=https-3A__www.icann.org_resources_unthemed-2Dpages_registry-2Dagmt-2D2001-2D05-2D11-2Den&d=DwlFaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=kbiQDH54980u4nTPfwdloDLY6-6F24x0ArAvhdeDvvc&m=8lhBRVPErXyFCabvflc3I9h-e0nmmKqcGoU7zOJpell&s=3We-EKIQWduEBx-D7WRpNBTDkIzu2VbgY2b-5GymNSM&e=

David McAuley 2: (14:46) I did hear Greg, but thrown out again - however I remain on phone

Jeff Neuman: (14:47) Way back in 2001

David McAuley 2: (14:47) parties argue about which law applies (if they don't agree) and judge makes decision

Milton Mueller: (14:47) thx David

Arasteh Kavouss: (14:47) Why they were removed?who removed them?

Milton Mueller: (14:48) which judge?

Arasteh Kavouss: (14:48) When they were removed?

Arasteh Kavouss: (14:48) Judge?

Milton Mueller: (14:48) Jeff, David, MM

Bernard Turcotte - ICANN: (14:48) Jeff, David, Milton

Arasteh Kavouss: (14:49) WHICH JUDGE? tHERE HAVE BEEN CONTRADICTION DECISION OF JUDGE ONE OVER RIDING THE OTHERS

Arasteh Kavouss: (14:50) sECRETARIAT,

Greg Shatan: (14:50) Kavouss, I believe it was ICANN's decision. No courts involved.

Bernard Turcotte - ICANN: (14:51) Greg next is Thiago

Arasteh Kavouss: (14:51) I cann must have rational to make a decision.

Jeff Neuman: (14:52) In 2006, it also appeared in the .biz agreement: https://urldefense.proofpoint.com/v2/url?u=https-3A__www.icann.org_resources_unthemed-2Dpages_registry-2Dagmt-2D2010-2D04-2D27-2Den&d=DwlFaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=kbIQDH54980u4nTPfwdloDLY6-6F24x0ArAvhdeDvvc&m=8lhBRVPErXyFCabvflc3I9h-e0nmmKqcGoU7zOJpell&s=L1r0tCU1VdeDu1fzGZwk8zPjLxKlcl6evcwKBcECGmo&e=

Arasteh Kavouss: (14:52) Secretariat, I appologize typing in upper case, pls kindly convert them in lower case

Arasteh Kavouss: (14:52) Tks

Jeff Neuman: (14:52) Section 5.1(b)

Thiago Jardim: (14:53) Support conditional on that issue being dealt with last

Cheryl Langdon-Orr (CLO): (14:53) indeed we do...

Jeff Neuman: (14:55) Actually, the legacy agreements (some of them) still have jurisdiction and venue in Los Angeles: https://urldefense.proofpoint.com/v2/url?u=https-3A__www.icann.org_resources_unthemed-2Dpages_biz-2Dagmt-2Dhtml-2D2013-2D09-2D13-2Den&d=DwlFaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=kbIQDH54980u4nTPfwdloDLY6-6F24x0ArAvhdeDvvc&m=8lhBRVPErXyFCabvflc3I9h-e0nmmKqcGoU7zOJpell&s=3w_zBst5JecREuruft8mrlGqYMSmLpUNKEN-7XTSUnQ&e=

Arasteh Kavouss: (14:55) Before deciding on an eventual Recommendation, we need to debate the issues first

Arasteh Kavouss: (14:55) Grec,

Milton Mueller: (14:58) :-)

Thiago Jardim: (14:58) Agree, Milton. Excellent.

Arasteh Kavouss: (14:58) we can not discuss OFAC before getting the history of it

Bernard Turcotte - ICANN: (15:00) time check 1 minute left in call

Arasteh Kavouss: (15:01) We ask ICANN not OFAC

Jeff Neuman: (15:01) On the governing law question, I am confused. Are we talking about jurisdiction, choice of law or venue? Or all 3?

Thiago Jardim: (15:02) Next time try and start in time

Thiago Jardim: (15:02) just that. we lose everytime about 3 to 4 min

Thiago Jardim: (15:02) at the start.

Milton Mueller: (15:02) right

David McAuley 2: (15:02) we should all assemble at the time then

David McAuley 2: (15:03) good points

Cheryl Langdon-Orr (CLO): (15:03) bye for now then... Thanks everyone

Jeff Neuman: (15:03) ok, some agreements have venue provisions but not choice of law

David McAuley 2: (15:04) Thanks all, good bye

avri doria: (15:04) bye

Jeff Neuman: (15:04) ICANN is not in a position to give a history of OFAC since that was created by the US Department of Treasury

Thiago Jardim: (15:05) Let's discuss that next time

Thiago Jardim: (15:05) Bye

Cheryl Langdon-Orr (CLO): (15:05) bye

Bernard Turcotte - ICANN: (15:05) bye all

Bonnie-CART: (15:05) Thank you!