

Jurisdiction Meeting #7 (10 October @ 19:00 UTC)

Attendees:

Sub-group Members: Andrew Harris, Avri Doria, Cheryl Langdon-Orr, David McAuley, Erich Schweighofer, Finn Petersen, Greg Shatan, Jeff Neuman, Jorge Cancio, Kavouss Arasteh, Milton Mueller, Pedro da Silva, Phil Marano, Philip Corwin, Rafael Perez Galindo, Robin Gross, Samantha Eisner, Tatiana Tropina, Tijani Ben Jemaa, Tom Dale (20)

Observers/Guests: Irene Borissova

Staff: Bernie Turcotte, Brenda Brewer, Karen Mulberry, Yvette, Guigneaux

Apologies:

Please let Brenda or Yvette know if your name has been left off the list (attendees or apologies).

Transcript

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

Recording

- The Adobe Connect recording is available here: <https://participate.icann.org/p3mssaujpnq/>
- The audio recording is available here: <http://audio.icann.org/accountability/ccwg-accountability-jurisdiction-10oct16-en.mp3>

Agenda

1. Welcome
2. Discussion of Approach: Our work so far, and a way forward (see email)
 - a. Changing ICANN's headquarters or incorporation jurisdiction
 - i. Will not be investigated at this time
 - ii. Not off the table -- If an issue is identified and we can't find a less drastic solution, will revisit this point, including concerns raised, in the context of the identified issue.
 - b. Confirm and Assessing Gap Analysis
 - i. Discussion has largely been about scope and not about confirmation and assessment
 - ii. Put to the side and revisit after work on substantive issue that is clearly "in scope"
 - c. We will continue discussion of Multiple Layers of Jurisdiction document
 - d. We will begin discussion of the "In Scope" Issue: *The influence of ICANN's existing jurisdictions relating to resolution of disputes (i.e., choice of law and venue) on the actual operation of policies and accountability mechanisms*
3. Multiple Layers of Jurisdiction https://docs.google.com/document/d/1oE9xDIAJhr4Nx7vNO_mWotSXuUtTgJMRs6U92yTgOH4/edit?usp=sharing
4. The influence of ICANN's existing jurisdictions relating to resolution of disputes (i.e., choice of law and venue) on the actual operation of policies and accountability mechanisms

Notes

Notes (including relevant parts of chat):

16 participants at start of call.

1. Welcome

Greg Shatan: No one on phone only. No changes to SOIs.

2. Discussion of Approach: Our work so far, and a way forward (see email)

a. Changing ICANN's headquarters or incorporation jurisdiction

i. **Will not be investigated at this time**

ii. **Not off the table -- If an issue is identified and we can't find a less drastic solution, will revisit this point, including concerns raised, in the context of the identified issue.**

Greg Shatan: Is this proposal ok? No comments. Assume no objections.

b. Confirm and Assessing Gap Analysis

i. **Discussion has largely been about scope and not about confirmation and assessment**

ii. **Put to the side and revisit after work on substantive issue that is clearly "in scope"**

Greg Shatan: Any issues with the proposal? No comments. Assume no objections.

c. We will continue discussion of Multiple Layers of Jurisdiction document

Greg Shatan: No comments. Assume to objections.

d. We will begin discussion of the “In Scope” Issue: The influence of ICANN’s existing jurisdictions relating to resolution of disputes (i.e., choice of law and venue) on the actual operation of policies and accountability mechanisms

Greg Shatan: No comments. Assume to objections. Overall comments?

David McAuley: Support the proposal overall and would propose doing D initially vs C.

Greg Shatan: I think we need to spend a little time on C so we all have a common understanding of what we mean by jurisdiction. It is not meant to be an exhaustive review of the layers.

David McAuley (RySG): Thanks Greg, sounds fine.

Milton Mueller: Support GS approach. Uncertain why put aside the gap analysis?

Greg Shatan: there has been a diversity views on this and no consensus by this group.

Kavouss Arasteh 2: Greg, I think you have proposed to put aside GAP analysis, why? I have no problem if we start with layers and then come back to GAP Alaysis - can you assure that we will not take jurisdiction off the table

3. Multiple Layers of Jurisdiction

(Multiple Layers of Jurisdiction document)

Greg Shatan: Jurisdiction of Incorporation definition. No comments.

Kavouss Arasteh 2: This document is written in a confusing manner perhaps to make it difficult to understand. It has been copied from the text of the WS1 which was also vague.

Greg Shatan: Jurisdiction of Headquarters proposed definition. No issues

Kavouss Arasteh 2: Greg, I have no problem for these cases , pls advise if there is an issue outside these places what would happened? the description of the multilayer as copied from the text of WS1 is vague ,unclear and requires streamlining - again and again, we should not just discuss the periphery of the case but the center of the issue

Greg Shatan: Places of physical presence.

David McAuley: Is ICANN incorporated in some of these other places of presence? Maybe ICANN legal can help.

Greg Shatan: Ok to ask ICANN Legal - but to my understanding a company can only be incorporated once and in one place. You may have to register with local authorities for doing business.

Kavouss Arasteh 2: 1. review the description as contained in WS1 and make it clear , understandable

Samantha Eisner: ICANN is not incorporated anywhere else. It is a registered foreign office or branch office equivalent in all other places.

Greg Shatan: Jurisdiction for Interpretation of contracts (choice of law or governing law).

Tijani Ben Jemaa: The real issue is the choice of the judge. As to Jorge's comment - who has the choice of applicable law?

Jorge Cancio (GAC Switzerland): the parties may in agreements determine the applicable law, as well as about the venue, provider etc of the dispute resolution.

Greg Shatan: Doing that at the time of a dispute is always an issue. Always best to do ahead of time.

Milton Mueller: you are saying that the Registry Agreement does not provide parties with choice of law?

Jeff Neuman: correct @milton

Milton Mueller: Same for RAA

Jeff Neuman: same with Registrar Accreditation Agreement

Jorge Cancio (GAC Switzerland): in the base registry agreement there are some provisions for specific cases where commitments conflict with applicable national law...

Milton Mueller: Yes, Jorge that's what I thought

Jeff Neuman: BUT, the venue is always in LA

Jorge Cancio (GAC Switzerland): there are some specific rules for governmental entities and IGOs I think

Jeff Neuman: For the Registrars it uses the American Arbitration Association

Greg Shatan: Jurisdiction of Litigation

David McAuley: WRT venue - we should not confuse with IRP which is essentially meant to be venue less.

Jorge Cancio (GAC Switzerland): My comments in the Google Doc are pointers of issues that could be improved (i.e. they are on the normative level) - but it's true that first we need a good factual description of the current situation

David McAuley (RySG): ok - will put the thought in google doc.

Milton Mueller: NTIA requirements are no longer required and this should be removed.

Greg Shatan: Think this is still valid.

Samantha Eisner: Requirements derived from NTIA's criteria are included in the WS2 Bylaw in Article 27

Avri Doria: I believe the NTIA requirements remain in effect for WS2.

Milton Mueller: How can they?

Avri Doria: as Sam says they are part of the transition bylaws. after WS2, then it is arguable.

Milton Mueller: NTIA transition requirements are just that: transition requirements.

Jeff Neuman: So lets dismiss the work "NTIA" and substitute Article 27 of the Bylaws

Pedro da Silva - [GAC Brasil]: Although I fully support the requirements set out for the transition, I agree with Milton here. Number 7 is not a proper layer.

Greg Shatan: good points will clean up the document. Encourage everyone to put their comments in the Google doc.

David McAuley (RySG): Thanks Greg - let us know when doc is cleaned up and we can go back in

Tijani Ben Jemaa: Agree with MM - no need for this (7) layer here.

Milton Mueller: Support deleting it and Article is not really relevant.

David McAuley (RySG): I think Jeff's idea makes sense - call it art. 27

Greg Shatan: Invite everyone to look at Article 27 C. This applies to all sub-groups.

Tatiana Tropina: I agree with David and Jeff makes sense for now.

Milton Mueller: we can't change anything major "tomorrow" (vs NTIA requirements)

Tatiana Tropina: I think they are not "requirements" anymore but rather principles we want to follow?

Greg Shatan: encourage everyone to think about the next piece of work - item 4 of the agenda. Adjourned.

Documents Presented

- [MultipleLayersofJurisdiction.pdf](#)

Chat Transcript

Brenda Brewer: Good day all and welcome to Jurisdiction Subgroup Meeting #7 on 10 October 2016 @ 19:00 UTC!

BERNARD TURCOTTE: Hi all

BERNARD TURCOTTE: and Happy Canadian Thanksgiving

Jeff Neuman: hello

Jeff Neuman: could you hear me when I was just talking?

David McAuley (RySG): Hi Brenda, I am 4154 again

Brenda Brewer: Thank you, David!

David McAuley (RySG): Happ Canadian Thanksgiving Bernie

David McAuley (RySG): Happy, that is

BERNARD TURCOTTE: Merci

Milton Mueller: Now I know why we have a holiday today ;-)

Tatiana Tropina: Hi all!

Jeff Neuman: i assume we have not started yet as I dont hear anything

Greg Shatan: Dialing in now.

Milton Mueller: Can you hear Greg, Jeff?

Jeff Neuman: yes

David McAuley (RySG): yes

Jeff Neuman: thx

Finn Petersen, GAC - DK: yes

Kavouss Arasteh 2: Hi all

Kavouss Arasteh 2: Sorry I have had internet connection

jorge cancio (GAC Switzerland): I'm also the swiss number :-)

Kavouss Arasteh 2: I had an phone problem which I have now solved

Kavouss Arasteh 2: Could I possibly get a new call back to follow the discussion?

Brenda Brewer: Yes Kavouss. Please stand by

Kavouss Arasteh 2: TKS

Kavouss Arasteh 2: MAY THEY TRY AGAIN PLS

Brenda Brewer: Calling now. First time, no answer Kavouss.

Brenda Brewer: Kavous, success!

Kavouss Arasteh 2: NO

Kavouss Arasteh 2: no

David McAuley (RySG): Thanks Greg, sounds fine

Kavouss Arasteh 2: Grec

David McAuley (RySG): It does Greg

Kavouss Arasteh 2: We understood your document and procedure that you have outlined

Kavouss Arasteh 2: Pls proceesd

Milton Mueller: there were gaps in the gap analysis?

Milton Mueller: :-)

Kavouss Arasteh 2: Grec, I think you have proposed to put aside GAP analysis ,why

Kavouss Arasteh 2: Dear Secretariat,pls include my chat comment as I do not have connection

Kavouss Arasteh 2: I have no problem if we start with layers and then come back to GAP Alaysis

Kavouss Arasteh 2: Grec ,can you assure that we will not take jurisdiction off the table

David McAuley (RySG): The google docs version with comments is what we need I think

BERNARD TURCOTTE: will have it in a minute

David McAuley (RySG): Thanks Yvette and Bernie

Philip Corwin: Apologies for late arrival but i was on another call that just ended

BERNARD TURCOTTE: Kavous I am taking in you chat comments

Kavouss Arasteh 2: This document is written in a confusing manner perhaps to make it difficult to understand. It has been copied from the text of the WS1 which was also vague

Kavouss Arasteh 2: Grec, I have no problem for these cases ,pls advise if there is an issue outside these places what would happened

Kavouss Arasteh 2: Grec, the description of the multilayer as copied from the text of WS1 is vague ,unclear and requires streamlining

Kavouss Arasteh 2: Grec, again and again, we should not just discuss the periphery of the case but the center of the issue

David McAuley (RySG): could I be heard

Samantha Eisner: I heard you

David McAuley (RySG): maybe lost connection

Cheryl Langdon-Orr: audio

Pedro da Silva - [GAC Brasil]: Yes David

Brenda Brewer: Yes David

Samantha Eisner: I can't hear anyone else now?

Yvette Guigneaux: Greg? Everything ok?

David McAuley (RySG): thanks Pedro

Yvette Guigneaux: Ok, we're good now

Kavouss Arasteh 2: The cases that relate to California and other places are clear as described by David

Kavouss Arasteh 2: Grec, pls kindly note the followings:

Tatiana Tropina: no, nothing on the audio bridge

David McAuley (RySG): I am using both and cannot hear Sam

Milton Mueller: None of us hear Samantha

Samantha Eisner: I'm on the audio bridge as well

Kavouss Arasteh 2: 1. review the description as contained in WS1 and make it clear , understandable

Samantha Eisner: I'll type

Samantha Eisner: ICANN is not incorporated anywhere else

David McAuley (RySG): thanks Sam

Samantha Eisner: It is a registered foreign office or branch office equivalent in all other places

David McAuley (RySG): ok, makes sense

Kavouss Arasteh 2: Grec, pls give an example of jurisdiction case ,say in Singapore?

Kavouss Arasteh 2: Brenda, I still discontinued since 20 mints ago

Kavouss Arasteh 2: disconnected

Brenda Brewer: I have dialed out to you again Kavouss.

Jeff Neuman: VENUE is always LA

Jeff Neuman: But choice of law is blank for both registry and registrar agreements

Cheryl Langdon-Orr: I will be boarding shortly... hopefully will be able to stay to the end of today's call...apols if I need to leave early though...

Pedro da Silva - [GAC Brasil]: Yes, Greg

Cheryl Langdon-Orr: yes hear yo

Yvette Guigneaux: We can hear you Greg

jorge cancio (GAC Switzerland): the parties may in agreements determine the applicable law, as well as about the venue, provider etc of the dispute resolution

BERNARD TURCOTTE: 15 minutes left

Milton Mueller: you are saying that the Registry Agreement does not provide parties with choice of law?

Jeff Neuman: correct @milton

Milton Mueller: Same for RAA

Jeff Neuman: same with Registrar Accreditation Agreement

jorge cancio (GAC Switzerland): in the base registry agreement there are some provisions for specific cases where commitments conflict with applicable national law...

Milton Mueller: Yes, Jorge that's what I thought

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avri doria: i beleive the NTIA requirements remian in effect for WS2.

Milton Mueller: How can they?

avri doria: as Sam says they are part of the ranstion bylaws. after WS2, then it is arguable.

Milton Mueller: NTIA transition requirements are just that: transition requirements.

Erich Schweighofer: Good descrption of the complex jurisdiction of ICANN - a stress test of possible influence of the various countries of jurisdiction may be helpful.

Jeff Neuman: So lets dismiss the work "NTIA" adn substitute Article 27 of the Bylaws

Pedro da Silva - [GAC Brasil]: Although I fully support the requirements set out for the transition, I agree with Milton here.

da Silva - [GAC Brasil]: Number 7 is not a proper layer.

David McAuley (RySG): Thanks Greg - let us know when doc is cleaned up and we can go back in

David McAuley (RySG): ok thanks

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Tatiana Tropina: I agree with David and Jeff

Tatiana Tropina: makes sense for now.

Milton Mueller: we can't change anything major "tomorrow"

Tatiana Tropina: I think they are not "requirements" anymore but rather principles we want to follow?

BERNARD TURCOTTE: top of the hour now

Milton Mueller: Art 27 are bylaws

Milton Mueller: not principles

Tatiana Tropina: that was rather reply to Greg about requirements, not comment on the art 27

Tatiana Tropina: sorry if anyone got confused

Milton Mueller: bye all!

Tatiana Tropina: Thanks you Greg, thanks all!

BERNARD TURCOTTE: bye all

David McAuley (RySG): thanks Greg and staff members, good bye all.

jorge cancio (GAC Switzerland): thanks and bye!

Erich Schweighofer: Bye.

avri doria: bye