

**Jurisdiction Meeting #5 (26 September @ 19:00 UTC)**

## Attendees:

**Sub-group Members:** Amrita Vasudevan, Andrew Harris, Avri Doria, Barbara Wanner, David McAuley, Farzaneh Badii, Greg Shatan, Griffin Barnett, Jyoti Panday, Kavouss Arasteh, Paul McGrady, Pedro da Silva, Phil Marano, Philip Corwin, Rafael Perez Galindo, Samantha Eisner, Tijani Ben Jemaa, Tom Dale, Vinay Kesari (19)

**Observers/Guests:** Cheryl Langdon-Orr, Iren Borissova, John Poole, Rishabh Dara, Taylor Bentley, Veni Markovski (6)

**Staff:** Anne-Rachel Inne, Bernie Turcotte, Brenda Brewer, Nigel Hickson

**Apologies:** Finn Petersen, Jorge Cancio, Milton Mueller, Matthew Shears, Paul Rosenzweig

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

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## Transcript

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

## Recording

- The Adobe Connect recording is available here: <https://icann.adobeconnect.com/p7knb6kx9k5/>
- The audio recording is available here: <http://audio.icann.org/accountability/ccwg-accountability-jurisdiction-26sep16-en.mp3>

## Agenda

1. Welcome
2. Continued Discussion of Gap Analysis: Annex 12 includes “confirming and assessing the gap analysis.”
  - a. Confirming the scope of the “Gap Analysis”
  - b. Method(s) of assessing/performing the Gap Analysis?
3. Continued discussion of whether any discussion of the effect of ICANN's place of incorporation and headquarters location is in scope for this subgroup.
  - a. Confirm that the scope of the Jurisdiction topic includes examining the effects of ICANN's place of incorporation and location (for example, on the actual operation of policies and accountability mechanisms and on the settlement of disputes)
  - b. Relationship to Gap Analysis
4. Continued discussion of whether the subgroup should have the capability to recommend that ICANN move its place of incorporation and /or headquarters location.
5. Begin discussion of “Multi-layers of Jurisdiction.”
6. Continued Detailed Reading of the Google Docs.
  - a. First Google Doc: [https://docs.google.com/document/d/1UGRQqP5Bs923nmDYekZn5ZL7-DQc\\_QSa0GSnFoj4Pn8/edit?usp=sharing](https://docs.google.com/document/d/1UGRQqP5Bs923nmDYekZn5ZL7-DQc_QSa0GSnFoj4Pn8/edit?usp=sharing)
  - b. Second Google Doc: [https://docs.google.com/document/d/1N2eCmjbA6bxJxCEluEHJIBzP\\_sGPN6krEqDshA0ARVM/edit?usp=sharing](https://docs.google.com/document/d/1N2eCmjbA6bxJxCEluEHJIBzP_sGPN6krEqDshA0ARVM/edit?usp=sharing)
7. Other Potential Inputs to our Work.
  - a. Pertinent Literature (influenced by Scope)
  - b. Experts/Legal Advice

## Notes (including relevant excerpts from the chat):

1. **Welcome**
  - Greg Shatan: no audio only. Any changes to SOIs? (none). (over 25 participants at start of call).
2. **Continued Discussion of Gap Analysis: Annex 12 includes “confirming and assessing the gap analysis.”**
  - a. **Confirming the scope of the “Gap Analysis”**
  - b. **Method(s) of assessing/performing the Gap Analysis?**
  - Greg Shatan: Given the list discussion this seemed a logical choice as the first topic for the discussion today. Good points brought up by DM.
  - David McAuley: Based on my experience on WS1 it was my impression that rec. 12 was asking us to consider the gap analysis provided in WS1 and therefore not necessary to do another one.

- Pedro da Silva: My conclusion is the opposite of the one by DM. There was an effort at the Istanbul meeting to start a gap analysis. What we had was an intense discussion and not a proper gap analysis. Based on this I conclude we have not completed a gap analysis and need to do so in WS2.
- Greg Shatan: Unfortunately, Milton Mueller is not here but will read his email - supports the notion that we need to do a formal gap analysis. Other valid input from Philip Corwin.
- Philip Corwin: If we do a gap analysis we cannot do it for specific issues (Chinese menu) we have to look at countries for all the aspects. Counsel at the end of WS1 confirmed that California law met the requirements - which is essentially a gap analysis. Now even if it would be recommended that ICANN be incorporated in another jurisdiction how would it then interact with the Empowered Community and PT1.
- Paul McGrady: 2 questions - Why would we jump to finding a new home for ICANN because there is a gap in a subset - would we not first look at filling the gap under the current jurisdiction. Secondly if we do decide to move - How would we proceed to select another country? Would we look at all countries? How long would this take and how much would this cost.
- Greg Shatan: Gap analysis is in two parts. The first is are there shortfalls in the current implementation of the recommendations - if not why would we look at another jurisdiction? If there is a gap it would seem logical to seek a simple solution which would not require moving incorporation. So we should do a gap analysis to confirm if there are gaps (but this does not need to be a work for the ages given our timeframe).
- Pedro da Silva: One of the tools for helping us to decide if we need to consider re-incorporation should be the gap analysis.
- David McAuley: I understand what PDS is saying but it would be good to know what we need to check for. Jurisdiction is important.
- Greg Shatan: Unless there is a critical that cannot be solved in California then the incorporation discussion should be ended.
- Avri Doria: Some feel the gap analysis has not been properly done. Once this is done we would look at these gaps, if any, to see what solutions could be applicable - but moving incorporation would be a very last resort. But to be clear gap, for me, does not automatically imply moving jurisdiction.
- Greg Shatan: Agree with AD.
- Paul McGrady 2: I agree with Avri - gaps do not automatically= moving out of California.
- Cheryl Langdon-Orr (CLO): Agree Avri
- Greg Shatan: Unless there are other comments we should look at doing some form of an analysis without re-inventing the wheel or incurring significant legal costs should be done? We need, as a group, to initially identify any potential gaps and if these are confirmed then we can consider if these need to go to the lawyers. Would prefer assignment model - where people tell us what they will look at.
- David McAuley (RySG): we should formulate an agreed base question as well - that we will be uniformly following as we review the report.
- Greg Shatan: Support DM suggestion. We need a limited time to get this done - 2 weeks? No objections. Action Item: We will review the results at our October 10th meeting.
- Pedro da Silva: So you are proposing that we divide amongst ourselves WS1 recommendations to look for gaps - if this is the case we should make a clear separation between requirements and implementation. For the EC this should be doable - we should have a table with the powers of the EC in one column listing the power and then another column listing the mechanisms for implementation.
- Greg Shatan: why look alternatives if there is no gap.
- Pedro da Silva: as pointed out by PC the EC is not membership.
- David McAuley: Agree with GS that we should not look for new jurisdiction until there is a real gap that cannot be resolved otherwise. Should the rapporteurs should get a clear crisp mandate which has been checked by the co-chairs.
- Greg Shatan: DM good suggestion. Action Item we should aim to have a completed gap analysis to present in Hyderabad.
- Paul McGrady 2: Not just before we identify gaps, but before we identify gaps that can't be fixed by new mechanisms while staying put...
- Paul McGrady 2: while staying put...
- Philip Corwin: Didn't our expert and not inexpensive outside legal experts provide us with reasonable assurance that all the accountability powers of the designator model could be reasonably and effectively exercised under CA law?
- Paul McGrady 2: @Phil - I thought they did and that was what was "sold" to the community before the Marrakech vote.
- Greg Shatan: The answer is yes but we have been asked to validate this as a community opinion vs a US legal opinion.
- Philip Corwin: Also, BTW, since the Board was effectively able to veto the member model maybe we should take their temperature on whether they have any sympathy for considering an ICANN organization change of jurisdiction in the near term. As they have accepted the designator model under CA law, should we expend any substantial time or \$ on looking at other jurisdictions to cure "gaps" if in the end the Board is going to tell us that they reject the concept of moving at this time? They did dispatch the new CEO to Capitol Hill two weeks ago to tell US Senators that ICANN had full intent to remain in the USA.
- Pedro da Silva: Support DM suggestion to prepare a set of questions.
- Greg Shatan: Is there anything beyond the question beyond the recommendation and how it is implemented. Uncertain about PDS issues. We will produce a question and then proceed to the analysis. Would ask participants to work with the list for questions. Meeting adjourned.

## Documents Presented

none

## Chat Transcript

Brenda Brewer:Welcome all to the Jurisdiction Subgroup Meeting #5 on 26 September 2016 @ 19:00 UTC!

Bernard Turcotte Staff Support:hello all

Pedro da Silva [GAC Brasil]:Hello all!

Bernard Turcotte Staff Support:Reminder please mute if not speaking

David McAuley (RySG):hi Brenda, I am 8222

Brenda Brewer:Thank you David!

nigel hickson:good evening

Cheryl Langdon-Orr (CLO):morning all

Paul McGrady:Do we have audio yet?

Brenda Brewer:Can you hear meeting now Paul?

Paul McGrady:Yes, thanks.

Pedro da Silva [GAC Brasil]:5189 is Pedro

Brenda Brewer:Thank you, Pedro!

Jyoti Panday:hello everyone

Andrew Harris:2932 is Andrew Harris

Philip Corwin:703xxx5316 is me ;-)

Greg Shatan:I hope that Pedro will be able to speak to his emails as well.

Brenda Brewer:Thank you, Phill!

Greg Shatan:We don't appear to have Milton with us on the call, but his email is short and can be brought up in this call..

Avri Doria:i have pinged him, just in case he is free.

Avri Doria:I do not understand why the chises restaurant does not work?

Avri Doria:... chinese restaurant model ... why can't some things be done in one place and some others in another place.

Avri Doria:Agree with Paul, do not understand why the possibility of finding another gap from a completed gap analysis all of a suddn make us jump to new place of incorp.

David McAuley (RySG):I think Greg summarized it well

Cheryl Langdon-Orr (CLO):I Agree David it mkes perfect sense to me

Paul McGrady 2:I agree with Avri - gaps do not automatically= moving out of California.

Cheryl Langdon-Orr (CLO):Agree Avri

Avri Doria:oh, i will vote for the space station solution, be warned.

Cheryl Langdon-Orr (CLO):-)

Paul McGrady 2:Ye olde slog.

David McAuley (RySG):we should formulatre an agreed base question as well - that we will be uniformly following as we review the report

Bernard Turcotte Staff Support:that would take us to the meeting on October 10th 1900UTC

David McAuley (RySG):yes

David McAuley (RySG):ignore the host Pedro

Paul McGrady 2:Not just before we identify gaps, but before we identify gaps that can't be fixed by new mechanisms shile staying put...

Paul McGrady 2:while staying put...

Philip Corwin:Didn't our expert and not inexpensive outside legal experts provide us with reasonable assurance that all the accountability powers of the designator model could be reasonably and effectively exercised under CA law?

Paul McGrady 2:@Phil - I thought they did and that was what was "sold" to the community before the Marakkech vote.

Cheryl Langdon-Orr (CLO) 2:@ Paul and Phil That is certainly my recollection

David McAuley (RySG):Mine too

David McAuley (RySG):Greg just said the opposite

Philip Corwin:Also, BTW, since the Board was effectively able to veto the member model maybe we should take their temperature on whether they have any sympathy for considering an ICANN organization change of jurisdiction in the near term. As they have accepted the designator model under CA law, should we expend any substantial time or \$ on looking at other jurisdictions to cure "gaps" if in the end the Board is going to tell us that they reject the concept of moving at this time? They did dispatch the new CEO to Capitol Hill two weeks ago to tell US Senators that ICANN had full intent to remain in the USA.

Bernard Turcotte Staff Support:time chekc - last minute of call;

Pedro da Silva [GAC Brasil]:I wanted to speak

Cheryl Langdon-Orr (CLO) 2:I think that is the quesstion

David McAuley (RySG):Any meeting is a good one where Occam's razor is invoked. Thanks all, good bye.

Bernard Turcotte Staff Support:bye all

Cheryl Langdon-Orr (CLO) 2:bye for now then ...

Avri Doria:bye

nigel hickson:thanks