

# Jurisdiction Meeting #48 (27 September 2017 @ 19:00 UTC)

## Attendees:

**Sub-group Members:** Avri Doria, Bartlett Morgan, Brian Scarpelli, Cheryl Langdon-Orr, David McAuley, Finn Petersen, Greg Shatan, Griffin Barnett, Herb Wayne, Kavouss Arasteh, Phil Marano, Philip Corwin, Raphael Beauregard Lacroix, Robin Gross, Steve DelBianco, Tijani Ben Jemaa (16)

**Observers/Guests:** Irene Borissova, Thomas Rickert (2)

**Staff:** Bernard Turcotte, Berry Cobb, Brenda Brewer, Patrick Dodson

**Apologies:** Jorge Cancio

*\*\* If your name is missing from attendance or apology, please send note to [acct-staff@icann.org](mailto:acct-staff@icann.org) \*\**

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## Transcript

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

## Recording

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

## Agenda

1. **Welcome**
2. **Review of Agenda (2 minutes)**
3. **Administration (1 minute)**
  - Changes to SOIs
  - Identify Audio Only and Phone Number Participants
4. **Complete Discussion of “OFAC Recommendation” (30 minutes)**
5. **Discussion of “Applicable Law and Choice of Venue Recommendation” (40 minutes)**
  - Choice of law provision in registry agreements – does the Subgroup endorse an option?
    - i. **“Status Quo” option** (no choice of law)
    - ii. **“Menu” option** – a limited number of choices (e.g., one per region)
    - iii. **“California” option** – California and US law is the governing law
    - iv. **“Carve out” option** – specified provisions are governed by a uniform law (e.g., California) while the rest are governed by the governing law of the Registry
    - v. **“Bespoke” option** – the governing law of the Registry is the governing law of the document
  - Choice of law provision in registrar accreditation agreements
    - i. Same choices as above? Same result?
  - Choice of venue provision in registry agreements
    - i. **“Status Quo”** (Los Angeles, California (or for governments and IGOs, Geneva, Switzerland))
    - ii. **“Venue Menu” option** – a limited number of choices (e.g., one per region) of arbitration venues (all applying ICC rules)
  - How should these recommendations be framed?
    - i. Are these only negotiating points between ICANN and the contracted party?
6. **Review of Revised “Proposed Issues” List (5 minutes)**
7. **Review of Schedule and Timeline (5 minutes)**
8. **AOB (5 minutes)**
9. **Adjourn (next meeting 27 September 1900UTC)**

## 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:

- OFAC recommendation – not accept changes proposed by KA

### Action Items:

- [GS to send the latest version of the OFAC recommendation to the list to see if there are significant objections to this version.](#)

### Requests:

- Participants contribute to the Choice of Law document.

### Documents Presented

- [Law and Choice of Venue\\_Draft Recommendation .pdf](#)
- [OFAC Recommendation with Kavouss Arasteh Proposed Changes](#)

### Chat Transcript

Brenda Brewer: (9/27/2017 13:22) Good day! Welcome to WS2 Jurisdiction Subgroup Meeting #48 on 27 September 2017 @ 19:00 UTC!

Brenda Brewer: (13:22) When not speaking, please mute your phone by pressing \*6 (star 6). To unmute, \*6. This call is recorded.

Brenda Brewer: (13:23) Reminder to all, for captioning and transcription, please state your name before speaking and speak slowly. Thank you!

Bernard turcotte - ICANN: (13:58) hello all

Herb Waye Ombuds: (14:02) Greetings all...

kavouss arasteh: (14:02) Hi Pls mute when typing

Brenda Brewer: (14:02) Please mute your mic when not speaking. Thank you!

Cheryl Langdon-Orr: (14:05) Sorry to be a few minutes late

avri doria: (14:07) i have another meeting on the hour, so will leave 30 minutes before the end.

Cheryl Langdon-Orr: (14:08) As do I the same meeting as Avri... But will try to keep an ear in this AC

David McAuley: (14:08) I am also in another meeting and may have to drop shortly after the top of the hour

Cheryl Langdon-Orr: (14:11) Yes a read through is needed

kavouss arasteh: (14:12) Greg, May you speak slowly

kavouss arasteh: (14:13) please mute when typing

kavouss arasteh: (14:15) Greg pls advise the paragraph you discussing by reference to para, no.

Bartlett Morgan: (14:17) Hello everyone. Sorry for being late

Robin Gross [GNSO NCSG]: (14:30) I like codification of the intent of the parties on choice of law, well in advance. So I like the options of California law or the option of where the registry resides.

David McAuley: (14:34) I am not prepared to choose yet - the recent discussion about this on list seemed a bit unsettled and the list just now strikes me as crisp. Now with this list of options I want to check with colleagues prior to stating a preference.

David McAuley: (14:34) Also, unable to speak other than by chat.

Cheryl Langdon-Orr: (14:35) Indeed @Kavous ... quite complex

Bernard turcotte - ICANN: (14:35) time check - 55 minutes left in call

David McAuley: (14:36) One problem with bespoke is that ICANN might have to track 190 - 200 laws and come up with very different interpretations

Cheryl Langdon-Orr: (14:38) @David to some extent the same concern can be raised in "Carve Out">

David McAuley: (14:38) agreed @CLO, partially the same issue

Cheryl Langdon-Orr: (14:39) However from my personal POV that does not mean they are not to be considered as options

Cheryl Langdon-Orr: (14:41) That would be a "Menue> of sorts as well @Greg not a criticism just a different type of menu

kavouss arasteh: (14:42) that was the choice I referred to as combination of options

Raphael Beauregard-Lacroix: (14:43) This is a good question indeed Greg..!

Tijani BEN JEMAA: (14:44) Sorry, technical problem

David McAuley: (14:44) I think Sam told us it was more complicated than that

Steve DelBianco: (14:46) Wait, Bernie. We can recommend revisions to RAA and Base RyA, for the next time they are revised

Steve DelBianco: (14:46) there is a process for RyA revisions

kavouss arasteh: (14:46) Ihear Bernie with distortion and some near end echo

Steve DelBianco: (14:47) Oh, I Agree now, Bernie

Raphael Beauregard-Lacroix: (14:47) I do agree with that pov as well

David McAuley: (14:47) I agree as well

Robin Gross [GNSO NCSG]: (14:47) agree

Raphael Beauregard-Lacroix: (14:47) no need to antagonise anyone with out work, suggesting changes as the fruit of our work seems to be the best way to proceed

Steve DelBianco: (14:50) it's "fleshed out", Greg !

Greg Shatan: (14:54) I have recirculated the OFAC Recommendations.

David McAuley: (14:54) I think deadline is around Oct 11, no?

Raphael Beauregard-Lacroix: (14:54) Yes that could be a possibility

Bernard turcotte - ICANN: (14:56) @DM - yes final deadline for documents for the 18 October plenary is 11 October as per usual

Raphael Beauregard-Lacroix: (14:56) ok thanks for the heads up

David McAuley: (14:57) I apologize - have to leave now to meet with a participant in another meeting. See you on list and next week.

Bernard turcotte - ICANN: (14:57) that means there are 2 Jurisdiction meetings left after this one

Bernard turcotte - ICANN: (15:00) time check - 30 minutes left in call

Philip Corwin: (15:01) With regrets, I need to drop off the call. my calendar invitation was for 60 minutes, not 90. Ciao

Steve DelBianco: (15:07) BLue, page 5

Steve DelBianco: (15:09) hand up

Cheryl Langdon-Orr (CLO): (15:09) yep remove the examples

Cheryl Langdon-Orr (CLO): (15:13) agreed @Steve of course I am also biased by our considerations from the Strest tests

Bernard turcotte - ICANN: (15:15) Time check - 15 minutes left in call

Thomas Rickert 2: (15:16) From what I hear, Kavouss does not wish to have the text presently discussed in the document. So there should not be any issue with removing it and continue with walking through the edits.

Cheryl Langdon-Orr (CLO): (15:18) we can state the WG reviewed examples if needs be Kavous without loosing any advantage perceived in having such reference in a preamble

Thomas Rickert 2: (15:19) Right, Cheryl.

Thomas Rickert 2: (15:20) I think the general concern is covered in the excerpt sent to the list by Farzi.

Thomas Rickert 2: (15:22) So why don't we make reference to the examples on this call, conclude that these are covered in general nature in the recommendation already and that the group has analysed the cases to establish that the concerns have been adequately covered.

Thomas Rickert 2: (15:23) I am now in a train with patchy connection so I cannot speak.

Thomas Rickert 2: (15:23) We would then have a record showing that we have discussed the case.

Thomas Rickert 2: (15:23) IN the call and transcript

Thomas Rickert 2: (15:24) The part shared by Farzi addresses exactly that case to avoid excessive application of Ofac

Bernard turcotte - ICANN: (15:24) Time check - 5 minutes left in call

Cheryl Langdon-Orr (CLO): (15:25) Works for me Thomas / Greg

Thomas Rickert 2: (15:27) We need to choose the words carefully on this. It may well be the Registrar has a credit facility and is contractually obliged to apply OFAC, but that would not come from ICANN but from the bank.

Thomas Rickert 2: (15:27) But I am sure we can find the right words.

Raphael Beauregard-Lacroix: (15:28) Kavouss: we just do not know. They might have other reasons why they would choose to act that way

Bartlett Morgan: (15:31) All I have to drop off now. Take care

Steve DelBianco: (15:32) Several of you are doing what I predicted: questioning whether the example is on-point to the recommendation. That is what will distract readers of our recommendations

Steve DelBianco: (15:32) If we follow the Stress Test example, we can devise some plausible scenarios that can "test" our recommendations

Steve DelBianco: (15:33) but these examples just do not belong in our document

Thomas Rickert 2: (15:33) Why can't we proceed as I suggested?

Bernard turcotte - ICANN: (15:33) 3 past the bottom of the hour

Thomas Rickert 2: (15:34) Thanks, Greg!

Steve DelBianco: (15:35) @Kavouss -- you could come back later with Stress Test scenarios.

Steve DelBianco: (15:35) I could help you with that

Thomas Rickert 2: (15:35) Good point, Steve!

Herb Waye Ombuds: (15:35) good bye all...

Thomas Rickert 2: (15:35) Thanks for offering help.

Cheryl Langdon-Orr (CLO): (15:35) thanks everyone good progress today bye for now

Raphael Beauregard-Lacroix: (15:35) bye bye all