

Jurisdiction Meeting #6 (5 October @ 13:00 UTC)

Attendees:

Sub-group Members: Alain Bidron, , Andrew Harris, Cheryl Langdon-Orr, Claudio Lucena, Corinne Cath, David McAuley, Finn Petersen, Greg Shatan, Griffin Barnett, Herb Wayne, Jean-Jacques Subrenat, Jeff Neuman, Jorge Cancio, Mike Silber, Pedro da Silva, Philip Corwin, Rafael Perez Galindo, Tatiana Tropina, Tijani BEN JEMAA. (19)

Observers: Amrita Choudhury, Taylor RW Bentley, Veni Markovski. (3)

Staff: Brenda Brewer, Bernard Turcotte, Karen Mulberry, Yvette Guigneaux. (4)

Apologies: Paul McGrady, Vinay Kesari, Milton Mueller, Sonigitu Ekpe

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

Transcript

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

Recording

- The Adobe Connect recording is available here: <https://participate.icann.org/p7csf3lcdj3/>
- The audio recording is available here: <http://audio.icann.org/accountability/ccwg-accountability-jurisdiction-05oct16-en.mp3>

Agenda

1. Welcome
2. Scope of our Work
3. Is the Possibility of Moving ICANN's Place of Incorporation or Headquarters Location from California in Scope?
4. Confirming and Assessing the Gap Analysis
 - a. "Gap" analyzed in Work Stream 1
 - b. Result of Gap Analysis in Work Stream 1
 - c. How should we confirm the Work Stream 1 Gap Analysis?
5. Multiple Layers of Jurisdiction
6. Other Potential Inputs to our Work.
 - a. Pertinent Literature (influenced by Scope)
 - b. Experts/Legal Advice

Notes

Notes (including relevant parts of chat):

20 participants at the start of the meeting.

1. Welcome

- Greg Shatan: No changes.

2. Scope of our Work

- Greg Shatan: I believe we have not yet settled the scope of our work. We can look at the EFFECTS of the place of incorporation.
- jorge cancio (GAC Switzerland): Is there any new proposal on the scope of our work? We still have Annex 12 approved by the community in Marrakech - that should be our basis...
- David McAuley: Annex 12, paragraph 30 seems pretty clear: At this point WS2's focus should be on the settlement of dispute jurisdiction issues – in that effort we should include confirming and assessing not the "gap" but the "gap analysis" –meaning, IMO, the provisions we have put in place for dispute resolutions – will they/do they work?
- Jean-Jacques Subrenat: For item 3 on our agenda, I will refer to a document of which I was a co-author, "Improving Institutional Confidence of ICANN", see archive.icann.org/en/psc/iic/improving-confidence-ne.pdf
- jorge cancio (GAC Switzerland): I feel the discussion on scope gets us into a circle... until we do not tackle the issues potentially under the scope agreed in Marrakech we won't see whether they are or not off-limits
- Tatiana Tropina: It feels quite good - you miss the couple of calls due to the tight travel schedule, and here we go - moving headquarters, not moving headquarters. My opinion stays the same - this is completely out of scope.

- Tatiana Tropina: Jorge, a rare case when I agree with you :D
- David McAuley: Our job is to look at alternatives vs dispute resolution period.
- Jean-Jacques Subrenat: 1) In "Improving Institutional Confidence" 2008-09, I as one of the co-authors had proposed the notion of "additional jurisdiction", rather than "alternative jurisdiction". This was important: ICANN Headquarters would not change, but jurisdiction could be added for non-contract aspects.
- Phil Corwin: vs arguing if it is in scope - does it make any sense discussing this possibility given there are no gaps, we have spent much money and time on making this under California law. Looking at alternates would be a significant undertaking which would long expensive and arduous. Agree with DM vs our scope. I agree with one of the previous speakers (David?) that we could agree to distinguish 2 things, contract-related items (US/California jurisdiction) and other items (conflict resolution, etc).
- Cheryl Langdon-Orr (CLO): I agree with David and Phil here
- Greg Shatan: PC and DM seem like logical conclusions. Worth noting that the gNSO council has passed a condition on the CCWG budget that it could not support work in the CCWG wrt moving ICANN's location of incorporation.
- Jorge Cancio: I wish to reiterate relative to scope - we have a scope from WS1 recommendation 12 - we should live with the AMBIGUITY for the moment. It would be more efficient to go to specific discussions and then we will see if there are issues that are out of scope. To have this scope beforehand is putting the cart before the horse.
- Greg Shatan: PC's remarks have moved us past scope to the realism of moving ICANN. What are your thoughts on this JC.
- Jorge Cancio: This is scope. (car analogy).
- Greg Shatan: since the remit of this group is 9 months it would seem unrealistic to think we would change the engine on the car in that time. (reads JJS comments from chat because of audio issues).
- Pedro da Silva: My comment is in line with JC - at this point of time this does not make sense and it is probable that when we complete our analysis of issues we will have the same conclusion but it will be stronger -so we should not deal with this at this point.
- Finn Petersen, GAC - DK: Denmark is of the view that it is not within our scope to recommend moving ICANN's Place of Incorporation or Headquarters Location from California. But if anybody can point to potential problems, we might look into means to address such problems without changing ICANN's place of incorporation.
- David McAuley: As a member of IRP there are issues that are related to IRP and touch on Jurisdiction.
- jorge cancio (GAC Switzerland): @David: thanks, hope that we keep efforts in parallel well coordinated...
- Greg Shatan: straw vote for this or not.
- Tijani Ben Jemaa: uncomfortable with this.
- jorge cancio (GAC Switzerland): For the reasons given I step away from such a straw poll
- Greg Shatan: many of our participants are arguing for this which is why I am bringing this up. Many green ticks no objections.
- Jean-Jacques Subrenat 2: @Greg: I agree that "moving the headquarters out of California" is not an urgent matter. We should examine what ADDITIONAL jurisdictions could achieve, for specific purposes.
- Greg Shatan: We have now covered points 2 and 3 in the agenda. Let us move to item 5.

3. Is the Possibility of Moving ICANN's Place of Incorporation or Headquarters Location from California in Scope?

- (see previous point)

4. Confirming and Assessing the Gap Analysis

- a. "Gap" analyzed in Work Stream 1
- b. Result of Gap Analysis in Work Stream 1
- c. How should we confirm the WorkStream 1

Gap Analysis?

- (Skipped)

5. Multiple Layers of Jurisdiction

- Greg Shatan: Presentation of the slide on Multiple Layers.
- Jean-jacques Subrenat: (continuing issues) Multiple layers is interesting but what are the purposes of having additional jurisdictions (additional vs alternate). Second remark (dropped audio),
- Greg Shatan: Why are we not using Adobe audio JJS - most use it for visual but audio is on phone because of quality issues. Any comments on the slide?
- Pedro da Silva: This is a good start. and how we should start our work. Would like a week to comment on this to see if we need to add to this. After that we could look at each of these as to how they affect the work of ICANN.
- Phil Corwin: There is a difference between types of contracts - registries and registrars should probably be under US law just for uniformity. Other parties such as real estate in other countries is another issue.
- Jean-Jacques Subrenat 2: @Greg: I suggest we use "additional jurisdictions" to avoid confusion about wanting to change headquarters or not. I was also saying it would be useful to examine several tasks where an additional jurisdiction would be useful, e.g. hiring people outside the US (employment, insurance, taxes).
- Greg Shatan: A third category could be for the choice of law for enforcing the decisions of the Empowered Community. Encourage everyone to read JC's email. Contracts with contracted parties are silent on choice of law or venue - we should confirm this. Let us look and comment on the slide in Google doc for comments. Next meeting 1900UTC Monday. Adjourned.

Documents Presented

- [Multiple Layers of Jurisdiction.pdf](#)
- [PotentialAspectsofScopeandFocusofJurisdictionSubgroup.pdf](#)
- Google doc version below of Multiple Layers of Jurisdiction slide - please feel free to make comments and/or suggestions: https://docs.google.com/document/d/1oE9xDIAJhr4Nx7vNO_mWotSXuTgJMRs6U92yTgOH4/edit

Chat Transcript

Yvette Guigneaux: Good day and welcome to the WS2 - Jurisdiction Subgroup Meeting #6 | Wednesday, 05 October 16| 13:00 UTC!

Pedro da Silva - [GAC Brasil]: Hello everyone!

jorge cancio (GAC Switzerland): hi there!

Brenda Brewer: Yes, Jean-Jacques, we hear you.

David McAuley: Hi Brenda, I am 4154

David McAuley: Good morning all

Bernard Turcotte: hello all

Cheryl Langdon-Orr (CLO): hi

Pedro da Silva - [GAC Brasil]: Hi Brenda, I am 6609

Jean-Jacques Subrenat: Hi All.

jorge cancio (GAC Switzerland): @Pedro: almost 666

Herb Wayne Ombuds: Good morning everyone

Pedro da Silva - [GAC Brasil]: @Jorge: LOL...what do you mean?

jorge cancio (GAC Switzerland): @Pedro: oh, no... nothing, really...

Pedro da Silva - [GAC Brasil]: :-D

Jean-Jacques Subrenat: Is this meeting due to start at 13:00 UTC?

Mike Silber: it was JJ

Philip Corwin: I am the 5316 number

jorge cancio (GAC Switzerland): Is there any new proposal on the scope of our work? We still have Annex 12 approved by the community in Marrakech - that should be our basis...

David McAuley: Annex 12, paragraph 30 seems pretty clear: At this point WS2's focus should be on the settlement of dispute jurisdiction issues – in that effort we should include confirming and assessing not the "gap" but the "gap analysis" –meaning, IMO, the provisions we have put in place for dispute resolutions – will they/do they work?

Jean-Jacques Subrenat: For item 3 on our agenda, I will refer to a document of which I was a co-author, "Improving Institutional Confidence of ICANN", see archive.icann.org/en/psc/iic/improving-confidence-ne.pdf

jorge cancio (GAC Switzerland): I feel the discussion on scope gets us into a circle... until we do not tackle the issues potentially under the scope agreed in Marrakech we won't see whether they are or not off-limits

jorge cancio (GAC Switzerland): audio is low

Bernard Turcotte: very faint

Cheryl Langdon-Orr (CLO): no audio on phone bridge at all

Tatiana Tropina: It feels quite good - you miss the couple of calls due to the tight travel schedule, and here we go - moving headquarters, not moving headquarters. My opinion stays the same - this is completely out of scope.

jorge cancio (GAC Switzerland): we should acknowledge reality and move headquarters to adobe space

Tatiana Tropina: Jorge, a rare case when I agree with you :D

Tatiana Tropina: awww I hope digital means Adobe connect space (lame attempt to joke)

Cheryl Langdon-Orr (CLO): if the AC S was more stable Jorge I would agree ;-)

Tatiana Tropina: Cheryl, nothing is stable, nothing in this world

jorge cancio (GAC Switzerland): @CLO: if it were stable it wouldn't be fun...

David McAuley: very faint sounds

Cheryl Langdon-Orr (CLO): :-)

Cheryl Langdon-Orr (CLO): thought it was feedback sounds briefly

Yvette Guigneaux: We heard you for a minute there Jean-Jacques, then faded again - working on getting IT involved to troubleshoot

Bernard Turcotte: Voice is clear on Adobe but not on phone bridge

jorge cancio (GAC Switzerland): @staff: the proposal of moving to adobe is a joke and should logically not be on the notes :-)

Bernard Turcotte: AND IS NOT

Tatiana Tropina: Is it Greg speaking now?

Cheryl Langdon-Orr (CLO): OK in the AC only not good for the record

Rafael Perez Galindo (GAC Spain): Am I the only one hearing Jean jacques??

Tatiana Tropina: Am lost and dunno whom to listen to

Tatiana Tropina: I heard both, speaking at the same time

David McAuley: Rafael - I could not hear him

Tatiana Tropina: but am not on the phone bridge (travelling)

Jean-Jacques Subrenat: 2 remarks:

Yvette Guigneaux: It appears some on the listening bridge only can hear Jean-Jacques but those on AC visual cannot, my apologies Jean-Jacques, working on this now

Tatiana Tropina: I heard him loud and clear and Greg was very faint

Rafael Perez Galindo (GAC Spain): Weird... I heard him pretty loud, actually

Rafael Perez Galindo (GAC Spain): Yeah Tania

Tatiana Tropina: Rafael, me too

Cheryl Langdon-Orr (CLO): I agree with David and Phil here

David McAuley: that is weird - i heard not a sound

Alain Bidron 2: No I can also hear Jean-Jacques but through the ADOBE

David McAuley: I am listening via phone line

Cheryl Langdon-Orr (CLO): I only hear him on the AC audio not the phone bridge

Tatiana Tropina: David, seems that you listened to Greg then, we listened to both :(

Jean-Jacques Subrenat: 1) In "Improving Institutional Confidence" 2008-09, I as one of the co-authors had proposed the notion of "additional jurisdiction", rather than "alternative jurisdiction". This was important: ICANN Headquarters would not change, but jurisdiction could be added for non-contract aspects.

David McAuley: seems strange Tatiana - I can listen to both sources from now though

Tatiana Tropina: aren't we supposed to know as those who were involved in the WS2 what was meant

Jean-Jacques Subrenat: 2) I agree with one of the previous speakers (David?) that we could agree to distinguish 2 things, contract-related items (US /California jurisdiction) and other items (conflict resolution, etc).

Tatiana Tropina: Sorry in WS1

jorge cancio (GAC Switzerland): I wouldn't dare to opine on the placement of the wheel without asking our UK friends :-)

Finn Petersen, GAC - DK: Denmark is of the view that it is not within our scope to recommend moving ICANN's Place of Incorporation or Headquarters Location from California. But if anybody can point to potential problems, we might look into means to address such problems without changing ICANN's place of incorporation.

jorge cancio (GAC Switzerland): @David: thanks, hope that we keep efforts in parallel well coordinated...

David McAuley: Thanks Jorge - still work to be done at IRP IoT

jorge cancio (GAC Switzerland): @David: it would be so important to make sure the IRP is considered as a global venue, accessible, etc...

David McAuley: Agreed

Jean-Jacques Subrenat 2: @Greg: I agree that "moving the headquarters out of California" is not an urgent matter. We should examine what ADDITIONAL jurisdictions could achieve, for specific purposes.

jorge cancio (GAC Switzerland): For the reasons given I step away from such a straw poll

Bernard Turcotte: Time note: 15 minutes left in the call

Rafael Perez Galindo (GAC Spain): I do

jorge cancio (GAC Switzerland): dear all: I have a hard stop. However, I would like to recall the issues I have mentioned in an email today that could fit into some of these layers

Jeff Neuman: I hear him through Adobe Connect

Jeff Neuman: The problem is through phone only i guess

Tatiana Tropina: I can hear loud and clear

Tatiana Tropina: but I am on Adobe only

Cheryl Langdon-Orr (CLO): go ahead

Greg Shatan: jj now on phone

Cheryl Langdon-Orr (CLO): BTW the preferred use of AC only holds IMO where the technology including Internet connection bandwidth and reliability is suitable Often even here in AU it is *not*

Pedro da Silva - [GAC Brasil]: difficult to understand Jean-Jacques (via phone)

Bernard Turcotte: just lost JJS

Cheryl Langdon-Orr (CLO): indeed

David McAuley: Agree w Pedro and now no longer hear via phone

Cheryl Langdon-Orr (CLO): now lost totally

Philip Corwin: JJ audio kaput

Veni Markovski: Now he's gone. I am only on the computer, adobe room, and couldn't understand him either.

Jean-Jacques Subrenat 2: why is not a majority of users using Adobe??

Cheryl Langdon-Orr (CLO): awful audio

Cheryl Langdon-Orr (CLO): cause it is CR*p

Cheryl Langdon-Orr (CLO): as you just demonstrated

Jean-Jacques Subrenat 2: @but why Greg? Is there not an agreed principle?

Jean-Jacques Subrenat 2: On ALAC calls it works fine...

Jeff Neuman: I use Adobe for both and it usually works well for me

David McAuley: I switch between them depending on audio quality

Tijani BEN JEMAA: @David, me too

Cheryl Langdon-Orr (CLO): as do I but always speak through phone to ensure best audio where possible

David McAuley: Me too CLO - speak over phone

Jean-Jacques Subrenat 2: @Greg: I suggest we use "additional jurisdictions" to avoid confusion about wanting to change headquarters or not. I was also saying it would be useful to examine several tasks where an additional jurisdiction would be useful, e.g. hiring people outside the US (employment, insurance, taxes).

Jean-Jacques Subrenat 2: @Greg: seen from Europe, 1, 2 and 3 can come under the same heading (incorporation, headquarters, physical presence).

Bernard Turcotte: Timing last minute

Cheryl Langdon-Orr (CLO): Thanks everyone... we are progressing it seems :-) talk again soon... Bye for now...

Philip Corwin: ciao

David McAuley: Thanks Greg, staff, all, good bye

Tatiana Tropina: thanks a lot Greg and all! Bye

Bernard Turcotte: bye all

Claudio Lucena: Bye all