

## **Jurisdiction Meeting #27 (18 April 2017 @ 19:00 UTC)**

## Attendees:

**Sub-group Members:** Andreea Brambilla, Avri Doria, Cheryl Langdon-Orr, David McAuley, Erich Schweighofer, Farzaneh Badii, Finn Petersen, Greg Shatan, Griffin Barnett, Herb Waye, Jorge Cancio, Kavouss Arasteh, Milton Mueller, Philip Corwin, Raphael Beauregard, Tatiana Tropina (16)

**Observers/Guests:** Irene Borissova, Taylor Bentley

**Staff:** Bernard Turcotte, Brenda Brewer, Nigel Hickson (3)

**Apologies:** Wale Bakare

*\*\* 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)

- 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 – none
- 4.2. Action Items:
  - 4.2.1. To review work plan presentation for plenary per comments (Greg)
  - 4.2.2. Questionnaire Review Team – Review latest submissions
  - 4.2.3. Will post to list to encourage discussion of the latest case analysis (Greg)

### 5. Update on Questionnaire (10 minutes)

- 5.1. Questionnaire closed April 17, 2017
- 5.2. Further responses received:
  - 5.2.1. Michael Graham
  - 5.2.2. European Commission (Cristina Monti, Head of Sector, Internet governance and Stakeholders' Relations)
  - 5.2.3. Iran (Mohammad Reza Mousavi, Information Technology Organization of Iran, International department)
  - 5.2.4. .swiss Registry (Jorge Cancio, on behalf of the .swiss registry) (in French)
  - 5.2.5. Russia (Yulia Elanskaya, Deputy Director of International Cooperation Department, Ministry of Telecom and Mass Communications of the Russian Federation) (in Russian)
  - 5.2.6. Singapore (QUEH Ser Pheng, Singapore GAC Representative, Deputy Director, Internet Resource Management, Connectivity and Competition Development Group)
  - 5.2.7. Internet Governance Project, Georgia Tech (Farzaneh Badii)
  - 5.2.8. Venezuela (Eng. Jesús Rivera, Venezuela GAC Representative, IANA Administrative Contact for .VE)
  - 5.2.9. Italy (Rita Forsi, Italian GAC Representative, Director General, Ministry of Economic Development)

### 6. Review of ICANN Litigations (15 minutes)

6.1. Name.Space, Inc. v. ICANN. – DM

6.2. Employ Media LLC v ICANN - RBL

**7. Questions to ICANN Legal: Follow-Up (10 minutes)**

7.1. Further questions and next steps

**8. Draft Work Plan and Schedule: Follow-Up (10 minutes)**

8.1. Comments or Questions on Current Draft (revised after Subgroup meeting and circulated to Plenary)

**9. AOB**

**10. Next meeting 25 April 05:00 UTC**

**11. Adjourned**

**Notes (including relevant portions of chat):**

16 participants at start of call

**1. Welcome**

**2. Review of Agenda (2 minutes)**

Greg Shatan - (none)

**3. Administration (1 minute)**

**3.1. Changes to SOIs**

Greg Shatan - Any changes (none).

**3.2. Identify Audio Only and Phone Number Participants**

Greg Shatan - Any audio only? (none)

**4. Review of decisions and action items from last call (2 minutes)**

**4.1. Decisions – none**

**4.2. Action Items:**

**4.2.1. To review work plan presentation for plenary per comments (Greg)**

Greg Shatan - this was done and emailed and presented to the plenary.

**4.2.2. Questionnaire Review Team – Review latest submissions**

Greg Shatan - No meeting of this group yet. An email has been sent to the QRT email list with a proposed process.

**4.2.3. Will post to list to encourage discussion of the latest case analysis (Greg)**

Greg Shatan - completed.

**5. Update on Questionnaire (10 minutes)**

**5.1. Questionnaire closed April 17, 2017**

Kavouss Arasteh - should cut off as of this meeting.

Greg Shatan - chat seems to indicate preference for Friday 23:59UTC (DECISION). need staff to advise when translations will be available (ACTION ITEM). Note that there are more than a dozen open comments currently.

avri doria: it isn't just holidays, it is the massive number for open comments.

avri doria: same thing happened at NCSG call this morning

Jorge Cancio (GAC Switzerland): I just note that apparently we have little feedback from registries and registrars (or their constituencies)...

**6. Review of ICANN Litigations (15 minutes)**

**6.1. Name.Space, Inc. v. ICANN. – DM**

David McAuley - Interesting case but very little impact on Jurisdiction. (presenting case analysis).

Milton Mueller - want to emphasize - the original lawsuit from NSI in the late 90's is why the USG asserted control over the Root to avoid the anti-trust issues. ICANN could still be sued for monopolization if it could be proved it colluded for this but this was by design and the fact it is US jurisdiction makes little difference.

Phil Corwin - question for DM - if this case were brought today would it also be dismissed?

David McAuley - Hard to say - it could have been a little easier for NSI to make the monopolization case - but uncertain they would have gotten any further.

Kavouss Arasteh: Milton, Is really ICANN able to do this type of monopolization after transition

avri doria: i think until it is challenged, it is difficult to call it definitively. Depends on how they interpret the NTIA grant to ICANN when it turned everything over.

Milton Mueller: there is no NTIA grant to ICANN

Greg Shatan - re anti-trust immunity or a state actor were not considered by the court - the contract with the USG was the main consideration.

avri doria: Milton, i will be interested to see how future cases argue it and how it is treated.

Milton Mueller: Kavouss: if ICANN passed a policy that was proposed by registrars and registries that substantially restricted competition in the domain name market it could be sued on antitrust grounds

David McAuley (RySG): The "no amendment would cure language by the court is also interesting

Erich Schweighofer: Does that mean that ICANN is subject to control of monopolisation, e.g. abuse of a dominant market position.

David McAuley (RySG): I cannot answer that one Erich

## **6.2. Employ Media LLC v ICANN - RBL**

Raphael Beauregard-Lacroix - (presenting case analysis)

Milton Mueller: What was the settlement, Raphael?

Raphael Beauregard-Lacroix - who would be able to register for .jobs.

Milton Mueller: Who caved ? ICANN or .JOBS?

Jorge Cancio (GAC Switzerland): what could be the reasons for not specifying the applicable law?

Raphael Beauregard-Lacroix - not specified in the documentation.

Jorge Cancio (GAC Switzerland): nobody does such a thing without a reason...

Milton Mueller: right

Jorge Cancio (GAC Switzerland): (being a well-advised corporation)

Greg Shatan - ACTION ITEM - Ask ICANN why applicable is not specified - Anyone interested in drafting? if not I will.

Kavouss Arasteh - why was this not included - there must be a reason?

Greg Shatan - any further questions?

## **7. Questions to ICANN Legal: Follow-Up (10 minutes)**

### **7.1. Further questions and next steps**

Greg Shatan - Sam Eisner was on the plenary call - if participants missed that they are encouraged to read the transcript or listen to the recording. Any further points on this except the question from the previous point? (none).

Jorge Cancio (GAC Switzerland): and I guess others may pop-up as we discuss

## **8. Draft Work Plan and Schedule: Follow-Up (10 minutes)**

### **8.1. Comments or Questions on Current Draft (revised after Subgroup meeting and circulated to Plenary)**

Greg Shatan - Encourage all comments on the plan - this is our plan so please comment. ACTION ITEM GS - will put it up as a GoogleDoc. to facilitate comments. Would like to remind everyone we should only look for remedies to issues that are identified.

David McAuley (RySG): That would be welcome Greg

Greg Shatan - would note there are some cases that have not been claimed for analysis - and would encourage people to claim those and those that have claimed but not completed to please complete these (ACTION ITEM). Would be nice to have something for ICANN 59.

Cheryl Langdon-Orr (CLO): aim for that...yes

Kavouss Arasteh - will this work plan actually get us somewhere?

Greg Shatan – This is my hope but this is our workplan – so up to us to decide.

David McAuley (RySG): our return to scope discussion will be important in this respect

9. **AOB (none)**

10. **Next meeting 25 April 05:00 UTC**

11. **Adjourned**

#### Decisions:

- Questionnaire responses will be accepted until Friday 21 April 23:59UTC.

#### Action Items:

- Staff – Get responses to questionnaire which are not in English translated to English.
- Greg Shatan – (Re Employ media case analysis) Draft a request to ICANN Legal as to why there is no choice of law in the registry agreements.
- Greg Shatan – Place work plan in Google Docs and post link to group to facilitate commenting.
- Greg Shatan – post update to list on Review of ICANN Litigations noting which cases are due by who and which cases still need people to review.

## Documents Presented

- [Name.Space, Inc. v. ICANN](#)
- [Employ Media LLC v ICANN](#)
- [Jurisdiction Revised Work Plan and Schedule 11April2017-v1](#)

## Chat Transcript

Brenda Brewer: Good day all and welcome to Jurisdiction Subgroup Meeting #27 on 18 April 2017 @ 19:00 UTC! Please mute your phone when not speaking by pressing \*6 (star 6). \*6 will also unmute. Thank you!

Bernard Turcotte Staff Support: hello all

Raphael Beauregard-Lacroix: hello!

David McAuley (RySG): I am in adobe but can't connect by phone until it charges a bit

Tatiana Tropina: hi all!

avri doria: are we talking yet?

Cheryl Langdon-Orr (CLO): nope

Nigel Hickson: good evening

Brenda Brewer: Talking now.

avri doria: on quick read - interesting collection of responses.

avri doria: will response in Russian be translated or should use Google.

Bernard Turcotte Staff Support: uncommon to accept after this week

avri doria: love fuzzy deadlines

Milton Mueller: like fuzzy teddy bears

Cheryl Langdon-Orr (CLO): end of week is fine by me

Bernard Turcotte Staff Support: @Avri - looking at translations

avri doria: end of week is fine for the extent of fuzziness

Jorge Cancio (GAC Switzerland): would consider also the need for translating in some cases, right?

Erich Schweighofer: Friday is fine.

David McAuley (RySG): now on phone, 4154

Herb Wayne Ombuds: sorry I'm late... greetings all

Milton Mueller: Friday is good

Bernard Turcotte Staff Support:Friday 23:59 UTC

Tatiana Tropina:Russian! :-)

Bernard Turcotte Staff Support:Working on Translations

Bernard Turcotte Staff Support:also a few Spanish

avri doria:though the speakers can quickly tell us if the google translations are any good.

Tatiana Tropina:Avri - that's what I am going to do.

Jorge Cancio (GAC Switzerland):"no" usually means also "no" in English :-)

avri doria:funny Jorge

Kavouss Arasteh:The reason that O PRPOSED EXTENSION WAS DUE TO 4 DAYS OF BRIDGE HOLIDAYS( eASTER)

Kavouss Arasteh:Sorry for Cap

avri doria:but ICANN almost always needs fuzzy deadlines.

avri doria:it isn't just holidays, it is the massive number for open comments.

avri doria:same thing happened at NCSG call this morning

Jorge Cancio (GAC Switzerland):I just note that apparently we have little feedback from registries and registrars (or their constituencies)...

Kavouss Arasteh:Jorge, It is obvious as they were against questions

Milton Mueller:Some non-American registrars may be afraid to respond

Milton Mueller:respond

David McAuley (RySG):05:00 UTC

Brenda Brewer:Responses to Questionnaire are posted here: [https://urldefense.proofpoint.com/v2/url?u=https-3A\\_\\_community.icann.org\\_x\\_UpXRAw&d=DwlCaQ&c=FmY1u3PJp6wrcrwl3mSVzgfbPSS6sJms7xcl4I5cM&r=kbiQDH54980u4nTPfwdloDLY6-6F24x0ArAvhdeDvvc&m=Xrn\\_rFsZtvXyPKxTJ9kDsvN4wNTu124xW1G3luat0mA&s=1aofN0sCu5TQ9FZ4ihQo7\\_h6yDR7Uo15r3WWdeEHhy8&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A__community.icann.org_x_UpXRAw&d=DwlCaQ&c=FmY1u3PJp6wrcrwl3mSVzgfbPSS6sJms7xcl4I5cM&r=kbiQDH54980u4nTPfwdloDLY6-6F24x0ArAvhdeDvvc&m=Xrn_rFsZtvXyPKxTJ9kDsvN4wNTu124xW1G3luat0mA&s=1aofN0sCu5TQ9FZ4ihQo7_h6yDR7Uo15r3WWdeEHhy8&e=)

Jorge Cancio (GAC Switzerland):@Kavouss: there are +1000 registries... and many registrars... many might have issues, but apparently this exercise was not interesting enough to them

Bernard Turcotte Staff Support:1 AM for Washington David

David McAuley (RySG): oh joy

David McAuley (RySG):plenary next day at same time

Jorge Cancio (GAC Switzerland):@Milton: why would they be afraid to respond?

Kavouss Arasteh:I am happy that I was not involved in this initiative, read transcript. But once other decided for 3 Qs, few people including me asked for additional questions

avri doria:No longer involved, but still may be deemed as having granted the monopoly power.

David McAuley (RySG):Interesting background, Milton, thank you

Milton Mueller:I am hearing you

David McAuley (RySG):i could hear Greg

David McAuley (RySG):yes

Bernard Turcotte Staff Support:Time Check - 30 minutes left in call

Kavouss Arasteh:Milton, Is really ICANN able to do this type of monopolization after transition

avri doria:i think until it is challenged, it is difficult to call it definitively. Depends on how they interpret the NTIA grant to ICANN when it turned everything over.

Milton Mueller:there is no NTIA grant to ICANN

Milton Mueller:there was an end to its contract

David McAuley (RySG):I think that is a fair statement Greg

avri doria:Milton, i will be interested to see how future cases argue it and how it is treated.

Milton Mueller:Kavouss: if ICANN passed a policy that was proposed by registrars and registries that substantially restricted competition in the domain name market it could be sued on antitrust grounds

David McAuley (RySG):The "no amendment would cure language by the court is also interssting

Kavouss Arasteh:somebody is typing

David McAuley (RySG):that was me sorry

Erich Schweighofer:Does that mean that ICANN is subject to control of monopolisation, e.g. abuse of a dominant market position.

David McAuley (RySG):I cannot answer that one Erich

Milton Mueller:What was the settlement, Raphael?

Jorge Cancio (GAC Switzerland):what could be the reasons for not specifying the applicable law?

Milton Mueller:Who caved ? ICANN or .JOBS?

Jorge Cancio (GAC Switzerland):nobody does such a thing without a reason...

Milton Mueller:right

Jorge Cancio (GAC Switzerland):(being a well-advised corporation)

Raphael Beauregard-Lacroix:alright

Bernard Turcotte Staff Support:who wil ask?

Milton Mueller:I think Jorge has volunrteered

Milton Mueller::-)

Bernard Turcotte Staff Support:14 minutes left in call

Jorge Cancio (GAC Switzerland):I trust Greg will formulate much more precisely than I could... but thanks for the heterovolunteering :-)

David McAuley (RySG):I like Becky's term: voluntold

Jorge Cancio (GAC Switzerland)::P

Bernard Turcotte Staff Support:yes it was Sam Eisner

Jorge Cancio (GAC Switzerland):we just had a follow-up question before...

Jorge Cancio (GAC Switzerland):and I guess others may pop-up as we discuss

Jorge Cancio (GAC Switzerland):ok with the no-self-medication-approach :-)

David McAuley (RySG):That would be welcome Greg

David McAuley (RySG):phone battery just died

Cheryl Langdon-Orr (CLO):aim for that...yes

David McAuley (RySG):our return to scope discussion will be important in this respect

Tatiana Tropina:it's ungodly early

David McAuley (RySG): the plenary is next day at same time i think

Jorge Cancio (GAC Switzerland):+ Tanya

Bernard Turcotte Staff Support:Correct

Farzaneh Badii:ungodly for the europeans at last!

Milton Mueller:yeah

Milton Mueller:fine for American night owls

avri doria:meetings rond the clock keep us young and flexible.

Cheryl Langdon-Orr (CLO):thanks everyone, bye for now then...

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

Raphael Beauregard-Lacroix:thanks all, goodbye

avri doria:bye

Bernard Turcotte Staff Support:bye all

Nigel Hickson:goodbye

Farzaneh Badii:good bye

Tatiana Tropina:bye

Jorge Cancio (GAC Switzerland):thanks Greg, and all!

Andreea Brambilla:Thank you!

Greg Shatan:Bye all!