

Jurisdiction Meeting #35 (14 June 2017 @ 13:00 UTC)

Attendees

Sub-group Members: Andreea Brambilla, Cheryl Langdon-Orr, Christopher Wilkinson, David McAuley, Erich Schweighofer, Farzaneh Badii, Greg Shatan, Herb Waye, Kavouss Arasteh, Parminder Singh, Paul McGrady, Philip Corwin, Steve DelBianco, Tatiana Tropina, Thiago Jardim, Thomas Rickert, Vidushi Marda, Wale Bakare

Observers/Guests: Garrett Hinck, Jonathan Peyster

Staff: Bernard Turcotte, Brenda Brewer, Nathalie Vergnolle

Apologies: Finn Petersen, Jorge Cancio, Avri Doria, Bartlett Morgan, Paul Rosenzweig

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

Transcript

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

Recording

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

Agenda

1. **Welcome**
2. **Review of Agenda**
3. **Administration**
 - 3.1. Changes to SOIs
 - 3.2. Identify Audio Only and Phone Number Participants
4. **Review of decisions and action items from last call (5 Minutes)**
 - 4.1. Decisions:
 - 4.1.1. (none)
 - 4.2. Action Items:
 - 4.2.1. Staff to prepare form letter/email for rapporteur wrt to decision this week. – Draft forthcoming
 - 4.2.2. GS – Circulate new draft of question to sub-group based on input from discussion prior to next meeting. – Charts of potential positions suggested on prior call was circulated June 11
5. **Follow-Up on Scope Discussion (25 Minutes)**
6. **Review of ICANN Litigation (15 Minutes)**
 - 6.1. Commercial Connect v. ICANN (Greg Shatan)
 - 6.2. Economic Solutions, Inc. v. ICANN (David McAuley)
 - 6.3. Status of Outstanding Cases
7. **Review of Questionnaire Responses (10 Minutes)**
 - 7.1. Response of Mohammad Reza Mousavi, Information Technology Organization of Iran, International department (Erich Schweighofer)
 - 7.2. Status of Outstanding Reviews
8. **AOB**
9. **Meetings Remaining Before ICANN59**
 - 9.1. Tuesday 20 June 1900 UTC
10. **Adjourned**

Raw Captioning Notes

Please note that these are the unofficial transcript. Official transcript will be posted 2-3 days after the call

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

Decisions:

- Thomas Rickert for the CCWG-Accountability Co-Chairs, We have concluded that the Jurisdiction sub-group will take Californian jurisdiction as a base line for all its recommendations, and that the sub-team not pursue recommendations to change ICANN's jurisdiction of incorporation, location of headquarters or seek immunity for ICANN. With this decision we are recognizing that there is no possibility that there would be consensus for an immunity based concept or a change of place of incorporation. As such I would establish in the minutes of this call that we focus on the solution that gets most traction. Recognizing that this does not eliminate, as I think Avri said during last week's call, that we can discuss all issues that might arise during the deliberations. But that we actually focus on the status quo being Californian law and place of incorporation. and work on solutions that are founded on this.

Action Items:

- (none)

Requests:

- (none)

Documents Presented

- [Distillation of Positions](#)

Chat Transcript

Brenda Brewer: (6/14/2017 07:52) Good day and welcome to Jurisdiction Subgroup Meeting #35 on 14 June 2017 @ 13:00 UTC!

Brenda Brewer: (07:52) If you are not speaking, please mute your phone by pressing *6 (star 6). To unmute press *6. This call is recorded.

Brenda Brewer: (07:52) Reminder to all, please state your name before speaking for the Captioner. Thank you!

Kavouss Arasteh: (07:55) tks

Pat-Captioner: (07:55) yes

Vidushi Marda: (07:59) Hi! I am in the adobe room now, thanks!

Brenda Brewer: (08:00) and your phone number ends with 6283, correct Vidushi?

Vidushi Marda: (08:00) yes!

Brenda Brewer: (08:00) Thank you! I've merged your name and phone number!

David McAuley (RySG): (08:00) I am no. 4154

Brenda Brewer: (08:00) Thank you David!

David McAuley (RySG): (08:01) Hi Thomas

Pat-Captioner: (08:02) Brenda, who is running this meeting?

Brenda Brewer: (08:03) Greg Shatan is the Speaker

Brenda Brewer: (08:03) I am the Staff Support

Pat-Captioner: (08:03) Thank you

Paul McGrady: (08:04) Good morning/afternoon/evening

Wale Bakare: (08:07) Hi all

Cheryl Langdon-OrrCLO: (08:08) sorry to be entering AC late

Herb Waye Ombuds: (08:08) Welcome to Canada Kavouss

Thomas Rickert, CCWG Co-Chair: (08:08) your sound comes through quite muffled

Thomas Rickert, CCWG Co-Chair: (08:08) That was for Greg

Kavouss Arasteh: (08:08) It is too low and not clear

Paul McGrady: (08:09) Greg, you are hard to hear

Thomas Rickert, CCWG Co-Chair: (08:09) Kavouss comes through loud and clearly

David McAuley (RySG): (08:09) not background

Farzaneh Badii: (08:09) I can hear Greg

Paul McGrady: (08:09) You are too low

Vidushi Marda: (08:09) greg your sound is very low

Farzaneh Badii: (08:09) but it might because I have magic ears!

Tatiana Tropina: (08:09) I can hear Greg perfectly

Andreea Brambilla: (08:09) I hear you ok, Greg.

David McAuley (RySG): (08:09) I hear Greg well but low

Thomas Rickert, CCWG Co-Chair: (08:10) sometimes sound quality varies depending on from where you sign into the adobe room

Kavouss Arasteh: (08:10) Bernie sound was good and clear but Greg's is still low

Wale Bakare: (08:10) I can hear Greg OK just an intermittent distortion in his voice

Wale Bakare: (08:12) *voice

Kavouss Arasteh: (08:13) Greg ,may you pls speak more loudly

Kavouss Arasteh: (08:21) Greg I have raised my hand several times but it was put it down from there why?

Bernard Turcotte Staff Support: (08:21) @Kavouss - we are not doing that manually

Vidushi Marda: (08:22) The work plan, as discussed on 24th April is "the Subgroup will identify issues before it goes on to explore remedies"; "for each issue, the group will then look at proposed remedies"; "the group should not discuss a remedy until an issue has been identified that requires discussion of that remedy"... why do we have to preclude the scope at this time? What concrete case has prompted this?

Bernard Turcotte Staff Support: (08:22) @Kavouss your hand is up now

David McAuley (RySG): (08:22) I agree with Thomas and on scope continue to believe what I posted back in September in this email <http://mm.icann.org/pipermail/ws2-jurisdiction/2016-September/000099.html>

Bernard Turcotte Staff Support: (08:22) and I will monitor that it stays up

Greg Shatan: (08:23) Here's what Thomas said: We take Californian jurisdiction as a base line for the recommendation, and that is the sub dream pursue recommendations to change ICANN's jurisdiction or headquarters are Corporation or seek immunity for ICANN. We are recognizing that there are no -- that there is no chance, if you look at various options that we have, that there would be consensus for an immunity based concept or a change of place of incorporation. And so I would establish in the minutes of this call that we focus on the solution that gets most traction. Recognizing that this does not eliminate, as I think Avri said during last week's call, that we can discuss all issues that might arise during the deliberations. But that we actually focus on the status quo being Californian law and place of incorporation. And California and work on solutions that are founded on this very recommendation.

Paul McGrady: (08:25) +1 Finding a way to give ICANN immunity would be the opposite of accountability. And accountability was the sole purpose of this CCWG in the first place.

Farzaneh Badii: (08:28) my goodness. we have been identifying the problems I thought that's what the questionnaires did.

Thiago Jardim: (08:29) I understand.

Thiago Jardim: (08:29) My reference to workplan is that it establishes we should look at ISSUES before REMEDIES.

Parminder: (08:30) Paul, that is your view. i think immunity is very workable with acct. mechanisms.

Bernard Turcotte Staff Support: (08:30) Kavouss should be next - seems to be having problems with his hand

Farzaneh Badii: (08:31) when we say immunity, are we talking about granting immunity to ICANN or certain functions of ICANN

Farzaneh Badii: (08:31) I think if there is a new angle to the immunity discussion, then we should discuss it

Parminder: (08:31) to me, sorry to observe, what i witness is an extra ordinary inteverention from ccwg co chairs and sub group chair to completely change the direction of this group. And this has come with little basis that arises from group's work itself.

Herb Waye Ombuds: (08:32) I have to leave. Best regards all. Herb

Farzaneh Badii: (08:33) But i think first we have to see what the problems are and if the only solution is to grant immunity to ICANN . if in scope of this group

Thomas Rickert, CCWG Co-Chair: (08:34) Let me add to what I previously said that we are applying the same principles as we did during the CCWG work. We had multiple options many times during our work and we only pursued those that have a chance to reach consensus and not pursue further those who do not get sufficient traction to become a consensus recommendation. This is principle has been applied here.

Philip Corwin: (08:36) What some of us are witnessing is an extraordinary effort by a few members of this subgroup to impede its work by endlessly seeking to divert it to pursuit of an objective for which there is clearly no consensus support and which is arguably out of scope to begin with.

Farzaneh Badii: (08:36) yes we should look for solutions for OFAC problems

Parminder: (08:36) Thomas, I heard the basis, but don't see any of such stage was reached. For instance, how you decided immunity is not workable, even without any discussion?

Thiago Jardim: (08:36) David, we could have an independent external panel examine these issues and consider the panel's report.

Farzaneh Badii: (08:36) this group is like a Merry-go-round. we keep discussing the same issue which doesn't take us forward. with no amusement

Tatiana Tropina: (08:37) Agree that we have to look at OFAC solutions instead of taking it as a problem leading to relocation

Tatiana Tropina: (08:37) but sweeping OFAC under the rug won't do us any good.

David McAuley (RySG): (08:37) also low volume

Thiago Jardim: (08:37) Tatiana, yes, but what is preventing us from doing that now?

Paul McGrady: (08:37) Very hard to hear Parminder

Vidushi Marda: (08:38) tatiana - agree, why can't we do so now?

Farzaneh Badii: (08:39) we were doing it a couple of sessions ago, and then I don't know what happened. we went back to ICANN's headquarter location/ immunity/ group mandate etc

Tatiana Tropina: (08:40) I think it's because different members of the group have different expectations from the OFAC discussion and other discussion. If we discuss it under the notion "ICANN stays in California, let's think what to do with OFAC (e.g. IGP proposed solutions)" is different to discussing this under the notion "OFAC is a problem let's relocate"

Thiago Jardim: (08:40) Jorge's proposal would allow us to resume our work

Greg Shatan: (08:40) Thanks, Tatiana. I guess the question is which discussion will be more fruitful.

Bernard Turcotte Staff Support: (08:41) Time Check - 20 minutes to the top of the hour

Tatiana Tropina: (08:41) OFAC discussion can be very focused and can be all over the place, so I understand why mandate discussion precedes - but I tend to agree with Farz as well that we are in circles.

Greg Shatan: (08:41) Thiago, don't you think Thomas's proposal also allows to resume our work?

Tatiana Tropina: (08:41) Greg, I think the discussion about mandate suffers from the same problem as possible OFAC discussion...

Philip Corwin: (08:41) This discussion is wasting another subgroup meeting and preventing us from making meaningful progress

Kavouss Arasteh: (08:41) pls do not put down my hand anymore

Farzaneh Badii: (08:41) agree with Phil

Thiago Jardim: (08:42) Greg, my objections were stated, as long as we examine remedies with a view to rejecting them now is premature

Farzaneh Badii: (08:42) I thought we agreed to accept ICANN jurisdiction location as is and discuss the problems. Avri suggested this and there was support

Thiago Jardim: (08:42) this is premature* and not necessary

Thiago Jardim: (08:43) We don't have to accept that ICANN will remain in California to discuss what the issues are arising from ICANN's being in California.

Greg Shatan: (08:43) Farzaneh, that is the case. This is essentially a second reading of the topic from last week's call.

Farzaneh Badii: (08:43) why are we doing a second reading? I am feeling dizzy going round the circle ...

Vidushi Marda: (08:44) I guess the reason we are going around in circles is this: during WS1, we were told that this would be addressed in WS2. It's a bit confusing to now be told that it's off the table. As Thiago has rightly pointed out, let's not conflate issues with remedies. Why can't we take Jorge's suggestion of considering this problem on a case by case basis? It's too early to exclude issues.

Parminder: (08:44) I did not hear people suggesting alternative jurisdictions as they like (for instance 200 jurisdictions)

Parminder: (08:44) they have been rather deliberate in what people recommend

Farzaneh Badii: (08:44) yes totally a shame if we don't spend time on substantive problems

Erich Schweighofer: (08:45) Accountability with immunity is the key question - not solved in international law or other jurisdictions

Parminder: (08:45) i dont think immunity is oppositie to acctabiltiy. and the chairs have no right to decide that for the group.

Parminder: (08:45) yes, immunity and accountability can be appropriatly combined

Erich Schweighofer: (08:47) It is possible but there is not much practice yet - immunity means no control by the host state

Thiago Jardim: (08:47) Enhancing ICANN's accountability includes its accountability to Governments, and as ICANN manages a common resource, leave it to the disproportionate influence of one State (whatever State that is) is opposite to ICANN's being fully accountable to Governments as a whole

Parminder: (08:47) Niether is there consensus to keep the status quo. this is important to understand and register.

Erich Schweighofer: (08:48) The question is enforcement of accountability .

Erich Schweighofer: (08:48) U.S. courts can do; others - not checked yet.

David McAuley (RySG): (08:50) yes - ok

Wale Bakare: (08:50) yes

Thiago Jardim: (08:51) Greg, I'll make my point here and would appreciate if you could read it and perhaps consider it: "why are we not discussing the impacts on ICANN's operations arising from it being located in the US?" - "why are we discussing remedies?" "we dont have to either reject or accept relocation to examine the impact"

David McAuley (RySG): (08:51) As for impact, I think the review of litigation cases gets at that

Farzaneh Badii: (08:52) and responses to questionnaires

Thiago Jardim: (08:52) Sorry, have to leave (I'm hoping to read the transcript and see my question in chat read out loud)

Farzaneh Badii: (08:52) we were discussing impact a couple of sessions ago. I don't know what happened.

Wale Bakare: (08:53) Exactly, the questionnaire was put in place to address that

Philip Corwin: (08:53) Sidley did not push us. Sidley worked at the direction of the CCWG

Bernard Turcotte Staff Support: (08:54) Time Check - 5 minutes to the top of the hour

Kavouss Arasteh: (08:57) Support from whom?

Greg Shatan: (08:57) In the interests of time, pls read Thiago's intervention as I won't have time to read it aloud.

Greg Shatan: (08:58) We take Californian jurisdiction as a base line for the recommendation, and that is the sub dream pursue recommendations to change ICANN's jurisdiction or headquarters are Corporation or seek immunity for ICANN. We are recognizing that there are no -- that there is no chance, if you look at various options that we have, that there would be consensus for an immunity based concept or a change of place of incorporation. And so I would establish in the minutes of this call that we focus on the solution that gets most traction. Recognizing that this does not eliminate, as I think Avri said during last week's call, that we can discuss all issues that might arise during the deliberations. But that we actually focus on the status quo being Californian law and place of incorporation. And California and work on solutions that are founded on this very recommendation.

Kavouss Arasteh: (08:58) Those people all coming from one single country or from millions of thers who are concwrrned on the matter

Parminder: (08:59) Thomas, it is simply not a procedural decision. It is a highly substantve one.

Parminder: (08:59) i object

Parminder: (08:59) unableto do red flag

Parminder: (08:59) OBJECTION

Bernard Turcotte Staff Support: (08:59) Noted

Parminder: (08:59) CANT DO RED FLAG

Thomas Rickert, CCWG Co-Chair: (09:00) Just to be clear, this is not a vote, but we will report objections to the plenary

Wale Bakare: (09:00) Can a recap of the suggestion be made?

Paul McGrady: (09:00) Unfortunately, I have to drop the call for another call that starts at the top of the hour. I hope that this group can find a way to move forward.

Kavouss Arasteh: (09:00) objection from kavouss

Farzaneh Badii: (09:00) I think there are three Greg

Farzaneh Badii: (09:00) Vidushi, Parminder and Kavouss

Tatiana Tropina: (09:00) Greg,three

Bernard Turcotte Staff Support: (09:01) 3 noted

Tatiana Tropina: (09:01) (not from me just the count)

Vidushi Marda: (09:01) there are three, and judging from thiago earlier maybe we put this on the list.

Cheryl Langdon-OrrCLO: (09:01) bye for now then

Tatiana Tropina: (09:02) Bye for now. Thanks Thomas, thanks Greg and thanks all.

Parminder: (09:02) Yes thiago shd have been fore warned of the impending vote

Erich Schweighofer: (09:02) Servus from London.

David McAuley (RySG): (09:02) Thanks Greg and staff, good bye all

Cheryl Langdon-OrrCLO: (09:02) bye

Wale Bakare: (09:02) Bye all

Vidushi Marda: (09:02) thanks.

Kavouss Arasteh: (09:02) I objected b

Bernard Turcotte Staff Support: (09:02) bye all

Farzaneh Badii: (09:02) bye.

Greg Shatan: (09:02) 4 objections noted.

Greg Shatan: (09:02) Bye all.

Greg Shatan: (09:02) Thanks!