

# Jurisdiction Meeting #34 (8 June 2017 @ 13:00 UTC)

## Attendees:

**Sub-group Members:** Avri Doria, Cheryl Langdon-Orr, Christopher Wilkinson, David McAuley, Erich Schweighofer, Farzaneh Badii, Greg Shatan, Herb Waye, Kavouss Arasteh, Paul McGrady, Paul Rosenzweig, Thiago Jardim, Thomas Rickert, Tijani Ben Jemaa

## Observers/Guests:

**Staff:** Bernie Turcott, Brenda Brewer, Kim Carlson, Meghan Healy

**Apologies:** Jorge Cancio, Finn Petersen

*\*\* 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 (5 minutes)**
  - 4.1. Decisions:
    - 4.1.1. Review decision to invite respondents to call. Advise respondents once their response has been presented and point them to reference material. If after reviewing this material the respondents wish to clarify or correct any elements with the Subgroup they will be invited to contact the Subgroup to schedule their participation in a call.
  - 4.2. Action Items:
    - 4.2.1. Staff to prepare form letter/email for Rapporteur to use in connection with this decision.
5. **Review Mandate and Scope (30 minutes)**
6. **Review of ICANN Litigation (15 Minutes)**
  - 6.1. Review sign-up sheet: <https://docs.google.com/document/d/1oo9oDJuuxFz1UUNaBfHeor7HPHJ5XcRHFTq3hjRltOM/edit?usp=sharing>
  - 6.2. Schreiber v. Dunabin (Raphael Beauregard-Lacroix)
  - 6.3. Bord v. Banco de Chile (Raphael Beauregard-Lacroix)
  - 6.4. Commercial Connect v. ICANN (Greg Shatan)
7. **AOB**
8. **Meetings Remaining Before ICANN59**
  - 8.1. Wednesday 14 June 1300 UTC
  - 8.2. Tuesday 20 June 1900 UTC
9. **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:

- (none)

### Action Items:

- Staff to prepare form letter/email for rapporteur wrt to decision this week
- GS – Circulate new draft of question to sub-group based on input from discussion prior to next meeting.

### Requests:

- (none)

### Documents Presented

- [QUESTION ON SCOPE OF CCWG](#)
- [Bord v Banco de Chile](#)
- [Schreiber v Dunabin et al](#)
- [Commercial Connect Litigation Summary](#)
- [Strawman Draft of Mandate of Jurisdiction Subgroup](#)

### Chat Transcript

Brenda Brewer: Good day and welcome to Jurisdiction Subgroup Meeting #34 on 8 June 2017 at 13:00 UTC!

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

Brenda Brewer: Reminder to all, please state your name before speaking for the Captioner.

Captioner: Hello

Brenda Brewer: Calling your phone, Kavouss. No answer yet.

Brenda Brewer: @ Kavouss, success!

Bernard Turcotte Staff Support: hello all

Thiago Jardim: Hi Bernard, hi everyone

David McAuley (RySG): i am 4154 number

Thomas Rickert, CCWG Co-Chair: Hi all!

David McAuley (RySG): Hello Thomas

Kavouss Arasteh: Dear Bernie,

Kavouss Arasteh: Is the June Schedule of CCWG sub groups including IOT already available?

Bernard Turcotte Staff Support: Yes would like me to email it to you?>

Paul Rosenzweig: I can't hear you Kavouss

David McAuley (RySG): hard to hear Kavouss

Thomas Rickert, CCWG Co-Chair: Sorry I cannot understand anything

Bernard Turcotte Staff Support: Kavouss you are very faint

Paul Rosenzweig: Your voice is muffled.

Farzaneh Badii: yea, can't hear you very well Kavouss

Thomas Rickert, CCWG Co-Chair: no, not understandable for me

Thiago Jardim: It clearer now

Thiago Jardim: its clearer now, Kavouss.

Thomas Rickert, CCWG Co-Chair:Kavouss, maybe you disconnect and then reconnect

Farzaneh Badii:what is the issue? the manner of speech?

Farzaneh Badii:we have gone through 15 minutes of this meeting and have not covered any of the agenda items. I am specifically interested in the mandate discussion because I don't know why we are re-opening the issue

David McAuley (RySG):Thiago asked a fair question and Greg gave a fair answer – I tend to agree w/Greg and think the review of agenda was handled in a good manner

Thiago Jardim:Is our workplan set in stone?

Thiago Jardim:If not, the fact that participants saw a problem in coming to the mandate debate again should have been dealt with by the group

Paul Rosenzweig:Isn't that what we are doing right now Thiago?

Thiago Jardim:Paul, I don't think so.

avri doria:i would note that when the Staff Acct group found itself questioning its charter, it went back to the WS2 meeting to request clarification and change. we have been around this issue so many times without resolution that it may be worth considering taking the issue up in the full meeting.

Thiago Jardim:Avri, that's sensible.

Thiago Jardim:Though I feel there are several issues we agree are part of our mandate, I guess we should deal with them and then refer to the WS2 for guidance for those controversial cases

Thiago Jardim:You put it as if there were only these two options, Greg. Either clarity or back to the WS2.

avri doria:an issue returning like that is often a sign of not reaching consensus

Thiago Jardim:But there is a question of timing too, I insist, we can move on, and bring to the plenary's attention those borderline cases

Paul McGrady:@Avri - agree. Absent consensus the status quo stands.

Paul Rosenzweig:With respect Thiago, that will not work. We are here having this discussion because the issue has been kicked down the road before. Constantly putting it off rather than resolving it is a disservice.

Thiago Jardim:Paul, and the status quo is that everything one can fit in as part of our mandate, as long as can fit in the ambiguities in there, are part of our mandate.

Paul McGrady:@Thiago, the status quo is California formation.

Paul Rosenzweig:Which Paul?

Thiago Jardim:The status quo of what is our mandate, I meant.

Paul Rosenzweig:Really? You are comfortable with a working group whose mandate is ambiguous?

Thiago Jardim:No, I'm not. But not everything is ambiguous.

Paul Rosenzweig:No, it isn't. Sartre was wrong :-)

Thiago Jardim:Let us take up Jorge's proposal and do as he suggests

Thiago Jardim:I'll paste it here what he said, and what I said

Thiago Jardim:and what parminster said

Paul McGrady:and done, and done and done...

Paul Rosenzweig:and done and done.

Paul McGrady:I guess I don't get the argument that if you don't get your way then your issue was treated as out of scope. We talked about dismantling WS1 by moving ICANN out of California and there was no consensus to do so. That doesn't make it out of scope. That makes it considered and not adopted due to lack of consensus.

Brenda Brewer:waiting for the email, Greg

Thiago Jardim 2:Let me reproduce it for those who may have missed it: "As to the mandate and scope: please note my position that we need to stick to the mandate given to the CCWG ws2 by the chartering organizations. ... The Subgroup may reach ex-post i.e. case by case its own understanding v-a-v a given case where there would be a question of in/out scope, but I don't think we should lose time on developing an ex-ante position of the Subgroup in general terms."

Paul Rosenzweig:Thiago I have no idea what that means????

Thiago Jardim:Others do

Thiago Jardim:Excellent, Avri

Farzaneh Badii:yes .... I totally agree with Avri . we should look to solve the problems ICANN jurisdiction raise.

Paul McGrady:@Avri - no "good" or "bad" has been assigned to people based on their position. If we think WS1 is a "good" than leaving California will undo that good, but someone wanting to undo that good is not a bad person.

Thiago Jardim:We don't have to assume anything at this point, we have to identify the issues.

Paul Rosenzweig:Then the implication of Avi's view is that the report to WS2 begins with the assumption that we are staying, right?

Paul Rosenzweig:I suspect some people disagree with even making that assumption, but if everyone would agree to accept it, it can be a basis for moving forward

Farzaneh Badii:questionnaires were there to identify the issues.

David McAuley (RySG):As to the slide's bottom line question I believe that the answer to the question is no – not in scope. I said as much in this email in September and continue in that opinion: <http://mm.icann.org/pipermail/ws2-jurisdiction/2016-September/000099.html>

Paul Rosenzweig:I agree with David as to the answer to the question.

Paul Rosenzweig:Avri's proposal lets us assume the answer.

Bernard Turcotte Staff Support:Tijani h and

Bernard Turcotte Staff Support:tijani hand

David McAuley (RySG):Kavouss's point about considering "impact" is a good one – that is the word in fact that appears in transition bylaw

Farzaneh Badii:I am just astonished! we even sent questionnaires out, we have now answers to the question of implication of ICANN jurisdiction instead of focussing on those answer and exploring how jurisdiction can affect ICANN accountability we are still talking about if mandate includes discussions about moving jurisdiction ...

Thiago Jardim:Farzaneh, I'm with you on that point

Thiago Jardim:Who's to blame for this I wonder

Thiago Jardim:point of order

David McAuley (RySG):we considered this question last year also

Farzaneh Badii:we totally did.

Farzaneh Badii:yes lets do as Avri suggests

Thiago Jardim:Avri, may I ask you to write your suggestion here in the chat?

Paul McGrady:+1 Thomas. Thank you for the clarity.

Paul Rosenzweig:+1 Thomas

Farzaneh Badii:+1 Thomas

avri doria:what not pursue the immunity question, at least a partial immunity question. isn't that one possible mitigation path?

Bernard Turcotte Staff Support:Time check - 10 minutes left

Paul McGrady:Agree Thomas. The formula is (Stay in California) + (look at remediation tools if any are needed)

Thomas Rickert, CCWG Co-Chair:Thiago, the main difference is the starting point of the assessment.

David McAuley (RySG):I think the immunity and related questions are for another forum – WS2 is meant to focus on following up on the accountability steps adopted in WS1

Paul Rosenzweig:+1 David

Farzaneh Badii:so we just consider impact of ICANN jurisdiction in this group David?

Farzaneh Badii:and then suggest have another group to consider remedy?

David McAuley (RySG):Farzi, in a sense yes but Annex 12 also asks us to look at dispute resolution aspects

Thiago Jardim:I think we should refer the issues to an independent panel for review

Greg Shatan:The queue is closed after Thiago.

David McAuley (RySG):Sorry Farzi - missed part 2 - I think immunity like questions won't be resolved in an ICANN group.

avri doria:need to drop off now. bye

Paul McGrady:+1 Paul R.

Farzaneh Badii:well no one came up with an alternative that could work better. and we have been discussing this for years now ...

Farzaneh Badii:goodbye everyone

Paul McGrady:+1 Greg. Good plan

Thiago Jardim:No rephrasing before seeing the different proposals raised in today's meeting

Thiago Jardim:Was I clear?

David McAuley (RySG):Thanks all, good bye

Bernard Turcotte Staff Support:bye all

Thiago Jardim:No AOB then?

Thiago Jardim:shame