# Jurisdiction Meeting #40 (1 August 2017 @ 13:00 UTC)

## Attendees:

**Sub-group Members:** Andrew Harris, Avri Doria, Bartlett Morgan, Cheryl Landon-Orr, Christopher Wilkinson, David McAuley, Farzaneh Badii, Greg Shatan, Herb Waye, Jeff Neuman, Kavouss Arasteh, John Laprise, Matthew Shears, Milton Mueller, Philip Corwin, Par Brumark, Steve DelBianco, Tijani Ben Jemaa, Wale Bakare (19)

**Observers/Guests:** Mark Carvell

**Staff**: Bernard Turcotte, Berry Cobb, Brenda Brewer, Elizabeth Andrews, Meghan Healy, Nigel Hickson, Samantha Eisner

**Apologies**: Finn Petersen, Jorge Cancio

*** If your name is missing from attendance or apology, please send note to 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 (1 minute)**
3. **Administration (1 minute)**
   - 3.1. Changes to SOIs
   - 3.2. Identify Audio Only and Phone Number Participants
4. **Presentation by ICANN Legal on OFAC (45 minutes)**
   - 4.1. Presentation
   - 4.2. Q&A
5. **Discussion with ICANN Legal on lack of "Choice of Law" provisions in registrar and registry agreements (10 minutes)**
6. **AOB (2 Minutes)**
7. **Adjourn (next meeting 9 August 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:

- (none)

### Action Items:

- (none)

### Requests:

- (none)

## Documents Presented

- OFAC Presentation
- OFAC AND OTHER SANCTIONS QUESTIONS FOR ICANN LEGAL

## Chat Transcript

Kavouss Arasteh: (8/1/2017 07:35) Dear Greg,Dear All, ther time of this meeting has not yet been agreed

Kavouss Arasteh: (07:35) There was some defficiencies to organize the meeting

Kavouss Arasteh: (07:36) I have serious difficulties not being able to freely express my legitimate opinion

Kavouss Arasteh: (07:37) Today, in the NATIONAL and PUBLIC HOLIDAY in the country that I am residing.

Kavouss Arasteh: (07:38) In the past we did our best to respect the National Days of several countries so we did in the past respecting 4TH OF jULY awlways WITHOUT EXCEPTION

Brenda Brewer: (07:39) Good day all and welcome to WS2 Jurisdiction Subgroup Meeting #40 on 1 August 2017 @ 13:00 UTC!

Brenda Brewer: (07:40) If you are not speaking, please mute your phone by pressing *6 (star 6). This call is recorded.

Brenda Brewer: (07:40) Reminder to all, please speak slowly and state your name before speaking for the Captioner. Thank you!

Farzaneh Badii (Badiei): (07:57) nice music!

Kavouss Arasteh: (07:58) What Music,

Kavouss Arasteh: (07:59) Was it Alpine Swiss Music

Farzaneh Badii (Badiei): (08:00) I think it was hip hop Kavouss! :) there could be some version of alpine swiss hip hop

Milton Mueller: (08:00) a combination of yodeling and rap?

Nigel Hickson: (08:01) good morning; good weather for Swiss Holiday.

Kavouss Arasteh: (08:01) Greg, Pls kindly note that before strating we have to approve agenda

Pär Brumark (GAC Niue): (08:01) Hi all!

Herb Waye Ombuds: (08:03) Hello all

Jeff Neuman: (08:03) I think we need to use our time wisely on this call and get down to substance please

Milton Mueller: (08:03) are you trying to prevent us from talking about OFAC, Kavouss?

Milton Mueller: (08:04) OFAC is on the agenda

Farzaneh Badii (Badiei): (08:04) We are here to talk about OFAC! sigh. if only one day we could go straight to the point

Brenda Brewer: (08:05) Kavouss, please speak slowly for the captioner.

Wale Bakare: (08:05) Hi all, good morning/afternoon

Milton Mueller: (08:06) Greg you were correct his time is up

Philip Corwin: (08:06) I would like to hear the staff presentation regarding OFAC

avri doria: (08:06) it is not a waste of my time.

Milton Mueller: (08:06) YOU are wasting our time, Kavouss

avri doria: (08:06) i would like to hear the presentation.

Farzaneh Badii (Badiei): (08:06) we want to hear this presentation!

Philip Corwin: (08:06) This filibuster is wasting time

Milton Mueller: (08:07) No

avri doria: (08:07) please!

Cheryl Langdon-Orr (CLO): (08:08) let's proceed

Milton Mueller: (08:08) Please cut him off he is not recognized

Jeff Neuman: (08:08) I would like to hear what Sam has to present with Kavouss objection noted

Cheryl Langdon-Orr (CLO): (08:08) mute lines other than Sam

Farzaneh Badii (Badiei): (08:08) 8 minutes of our life gone

avri doria: (08:09) lets listen to the presentation, please.

Philip Corwin: (08:09) Am I the only one who discerns some irony that the subgroup member who has been most insistent that we discuss OFAC is now preventing us from discussing OFAC?

Cheryl Langdon-Orr (CLO): (08:09) hi Sam

Milton Mueller: (08:09) we are all aware of that irony Philip

Jeff Neuman: (08:11) Can we mute ALL lines other than Sam for now. I hear breathing

Kavouss Arasteh: (08:11) These are clearly and comprehensively explained in the background documents

Kavouss Arasteh: (08:11) For the sake of efficiencies and brevity we do not need this general presentation .

Jeff Neuman: (08:11) I think Steve DelBianco's phone is not muted

Kavouss Arasteh: (08:12) Please shorten the presenrtation

Kavouss Arasteh: (08:13) We do not need tutorial presentation by SAM nor we need that she defend OPFAC

Kavouss Arasteh: (08:13) gREG,

Greg Shatan: (08:13) Can 15712998624 please identify themselves?

Farzaneh Badii (Badiei): (08:13) OFAC does not only to SDN list Sam. it applies to ordinary people as well

Kavouss Arasteh: (08:13) PLS ADVISE HER TO SHORTZEN THE PRESENTATION AS ALL SHE SAID ARE ALREADY WELL DOCUMENTED

Jeff Neuman: (08:14) @Greg - I think that is Steve

Greg Shatan: (08:14) Can "anonymous" please identify themselves?

Farzaneh Badii (Badiei): (08:14) Thanks Sam

Kavouss Arasteh: (08:14) Greg, pls kindly collaborate and be fair . These briefing is not necessary

Jeff Neuman: (08:14) "from that area" or "living in that area"?

Greg Shatan: (08:15) Kavouss, your objections are noted.

Kavouss Arasteh: (08:15) Greg

Philip Corwin: (08:15) I am finding this oral briefing useful

matthew shears: (08:15) I for one appreciate the presentation

Kavouss Arasteh: (08:15) pls kindly listen,

Greg Shatan: (08:15) Kavouss, Sam has so far taken less time than you did.

Milton Mueller: (08:16) national origin not residence?

Kavouss Arasteh: (08:16) We give the questions to her and she reply to that in A logical manner and in written form

Farzaneh Badii (Badiei): (08:16) well passport holders too, it applies to me. ICANN has to get OFAC license for me when providing travel support :) so I have heard

Kavouss Arasteh: (08:17) Origin or residence of a person is outside the judgement of any of CCWWG outside

Greg Shatan: (08:18) Kavouss, you are correct. That is a matter of applicable law.

Kavouss Arasteh: (08:18) Pls do not interfer with personal affairs of the peopl

Bartlett Morgan: (08:18) Hello everyone

Farzaneh Badii (Badiei): (08:18) personal affairs?

Kavouss Arasteh: (08:18) All SAM says are already available on the websites

Farzaneh Badii (Badiei): (08:18) no it is not Kavouss.

Farzaneh Badii (Badiei): (08:19) She is explaining ICANN now and registry registrar agreements and application of OFAC to them

Brenda Brewer: (08:19) As Greg noted above, please identify your name if logged in as "anonymous" or phone number ending with 8624. Thank you!

Kavouss Arasteh: (08:20) Iam not convinced with the replies given to my questions

Milton Mueller: (08:20) US Congress would have to create this general license or Treasury?

Kavouss Arasteh: (08:20) The replies are frustrating and disappointing

Jeff Neuman: (08:22) Are licenses by the individual or can you get a "group" license?

Kavouss Arasteh: (08:22) These recently replies are outside the issue

Kavouss Arasteh: (08:22) Greg, pls kindly advise her to come to the points abnd not provide her personal views

Kavouss Arasteh: (08:23) yes question

Milton Mueller: (08:24) thanks for the answer

Philip Corwin: (08:24) Has USTreasuey ever denied a specific license requested by ICANN? If so, on what grounds?

Philip Corwin: (08:25) Treasury

Philip Corwin: (08:28) Thx. If you could confirm the absence of denials that would be useful data.

Milton Mueller: (08:30) I don't understand how a root zone change would require an OFAC license?

Jeff Neuman: (08:30) thanks....and I assume those cases are exempted from the SLAs...which I believe would make sense.

Jeff Neuman: (08:30) Thanks!

Milton Mueller: (08:32) so it's only for certain countries like Iran or Sudan?

Jeff Neuman: (08:32) correct...or if an entity was on the SDN list

Farzaneh Badii (Badiei): (08:32) I think 6 countries

Milton Mueller: (08:32) got it

Milton Mueller: (08:32) thans

Wale Bakare: (08:32) Can we, for now know the countries? Or just only Iran, Sudan?

Jeff Neuman: (08:33) Currently, sanctioned countries include the Balkans, Belarus, Burma, Cote D'Ivoire (Ivory Coast), Cuba, Democratic Republic of Congo, Iran, Iraq, Liberia, North Korea, Sudan, Syria, and Zimbabwe.

Milton Mueller: (08:33) 6 countries, Wale.

Milton Mueller: (08:34) oh, more than 6

Bernard Turcotte - ICANN: (08:34) time check - 27 minutes left in call

Wale Bakare: (08:34) Thanks, Milton and Jeff

Jeff Neuman: (08:34) https://urldefense.proofpoint.com/v2/url?u=https-3A__www.treasury.gov_resource-2Dcenter_sanctions_Programs_Pages_Programs.aspx&d=DwIFaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4I5cM&r=kbiQDH54980u4nTPfwdloDLY6-6F24x0ArAvhdeDvvc&m=ph851Jh6RyHQWxiJ6uRIFVwVWEtuMtU36_1HuXf1u2s&s=0sVxkTqGj3MAS2K8eLngqxvrP7-89EMjzOQNGDi29mo&e=

Jeff Neuman: (08:35) Venezuela was just sanctioned yesterday, but I think that is limited to a person

Jeff Neuman: (08:35) or people

Milton Mueller: (08:35) yes, it's individuals not the country

Farzaneh Badii (Badiei): (08:36) Thank you

Jeff Neuman: (08:36) It seems like Burma and Ivory Coast sanctions ended last year

Christopher Wilkinson (CW): (08:36) Sorry, that has to be rephrashed. It sounds just like a copout by ICANN.

Wale Bakare: (08:36) How would the registrars, registries of the sanctioned countries and/or individual affected now with ICANN activities?

Philip Corwin: (08:37) What I am hearing is that ICANN does not provide legal advice to contracted parties or act as a law enforcement body.

Greg Shatan: (08:37) I note that the "copy and pasted" registrant agreements also have the following language, though neither are in India: " All dates and times relevant to this Agreement or its performance shall be computed based on the date and time observed in Mumbai, India (IST) i.e. GMT+5:30"

Milton Mueller: (08:38) that is weird

Kavouss Arasteh: (08:40) Sam , Greg, The areas that ICANN has no answer rthen sub Group should answer g

Steve DelBianco 2: (08:40) contract parties may do business that does not involve ICANN contracts in any way, and these activities may be restricted by various sanctions in multiple countries

Farzaneh Badii (Badiei): (08:41) yes Steve. but can ICANN clarify that because of its contract with registrars they don't have to follow OFAC?

Wale Bakare: (08:41) I think, the idiscussion around immunity, raised in previous meetings may not just fade away

Kavouss Arasteh: (08:41) May answers given stemmed from the applicability of US Law then we have to find a way to resolve thaose area

John Laprise: (08:41) Kavous: ICANN can't. The particulars of each case vary too widely.

Christopher Wilkinson (CW): (08:42) Well, I have some doubts about the omnisceince of the business operators. Could ICANN survey all ccTLDs as to whether or not the law appliss to them and in which way?

John Laprise: (08:43) Christopher: I'm not sure operators would be willing to disclose particulars of business operations.

Steve DelBianco 2: (08:44) Sam, can you say "Contract parties are not obligated to follow OFAC solely on the basis of their havinga contract with ICANN. " ?

Farzaneh Badii (Badiei): (08:44) oh yes that was my question Steve

Farzaneh Badii (Badiei): (08:44) thanks for putting it accurately. I will lower my hand

Steve DelBianco 2: (08:45) Thanks, Sam. I think that statement, provided in writing from your office, could clear up some problems

Kavouss Arasteh: (08:45) Sam, several questions tha I raised were neither replied properly and completely or they were not answered at all or the answers given were irrelevant

Farzaneh Badii (Badiei): (08:46) yes I think it does Steve. I agree

Kavouss Arasteh: (08:46) Sam, Greg, I nned writrten convincing answers to my questions in a logical, legally valid and in written form

Cheryl Langdon-Orr (CLO): (08:46) this is all helping me understand more thanks Sam

Christopher Wilkinson (CW): (08:47) "John Laprise: This is not about their business operations. It is a question of the appliccability of OFAC to their domestic situation. CW

Greg Shatan: (08:47) Kavouss, it was hard to discern the questions in your intervention. Staff will go through the transcript and try to identify the questions.

Wale Bakare: (08:49) Ea

Farzaneh Badii (Badiei): (08:49) I think it should be a requirment for ICANN to seek an OFAC license

Kavouss Arasteh: (08:49) The questions that I sent to you plus those raised or being raiswed during the call as well as those in the chat

Wale Bakare: (08:50) Exactly, ICANN should shoulder the responsibility

Bernard Turcotte - ICANN: (08:51) time check - 9 minutes left in call

Bartlett Morgan: (08:52) having a hard time following kavous

Milton Mueller: (08:52) he asks is DNS an asset or not?

Milton Mueller: (08:53) but it takes 5 minutes

Farzaneh Badii (Badiei): (08:53) hmm we could write a 200 page on that

Bartlett Morgan: (08:53) @Milton thanks

Wale Bakare: (08:54) @Farzaneh, "a 200-page" on what, if i may ask?

avri doria: (08:54) Is it ICANN's question to ask?

Kavouss Arasteh: (08:54) Sam , fair enough . tHEN if ICANN CAN NOT TAKE ACTIONS ON THIS WHO COULD OR MUST ADDRESS THAT? nO DOUBT , ccwg AND ITS jURISDICTION SUB GROUP

John Laprise: (08:55) ICANN can't assume that responisibility: they don't have the standing. The US Govt and the operator are the ones.

Milton Mueller: (08:55) There are two others in the queue

avri doria: (08:56) John, it can't for the Rr & Ry, but it can for the functions it provides.

Kavouss Arasteh: (08:57) sAM ,OFAC was not designed to cover DNS

Philip Corwin: (08:57) As this is a subgroup of the Accountability CCWG, isn't the most important question whether the existence of OFAC frustrates any aspect of ICANN accountabilty? I'm not seeing any reason to believe that it does.

Wale Bakare: (08:57) @John, who are the maintainers of the DNS root server?

Farzaneh Badii (Badiei): (08:58) thanks

Jeff Neuman 2: (08:58) The only thing I think that really relates is to codify this existing practice

Wale Bakare: (08:58) *servers*

Farzaneh Badii (Badiei): (08:59) we should probably change this language in registrar accreditation agreement? "However, Applicant acknowledges that ICANN is under no obligations to seek such licenses and, in any given case, OFAC could decide not to issue a requested license"

John Laprise: (08:59) Avri: only to the extent that it has knowledge and standing, right?

Kavouss Arasteh: (08:59) Sam, We are hearing contradictory statements, on the one hand we have heard that ICANN has no obligation to require Registries and Registrar to prevent providing DNS to the requesters and on the other hand you said OFAC applies to all cases in regard with the countries subject to OFAC.

Jeff Neuman 2: (08:59) In other words, I am not a fan of the language that says that ICANN is not under an obligation to even try and seek a license. I know legally that protects them, but I do think that ICANN should have an obligation to seek the license

Farzaneh Badii (Badiei): (08:59) I have another question from Sam about the lenght it takes to receive a licence for new gtld applicants

Farzaneh Badii (Badiei): (08:59) but I can ask it on the mailing list?

Kavouss Arasteh: (08:59) wHICH IS RIGHT AND WHICH IS WRONG, Pls answer that issue ion reply you willé provide

Jeff Neuman 2: (09:00) obviously it cannot control what Treasury does

Brenda Brewer: (09:00) This presentation is posted on the Jurisdiction Meeting wiki page here: https://urldefense.proofpoint.com/v2/url?u=https-3A__community.icann.org_x_QAIhB&d=DwIFaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4I5cM&r=kbiQDH54980u4nTPfwdloDLY6-6F24x0ArAvhdeDvvc&m=ph851Jh6RyHQWxiJ6uRIFVwVWEtuMtU36_1HuXf1u2s&s=7NaC88ZywMM0h0AtPLA0qEJQUen_9AqwbKO7waPytRk&e=

Jeff Neuman 2: (09:00) This has been great!

avri doria: (09:00) yes, thank you Sam.

Farzaneh Badii (Badiei): (09:01) Yes very good, thanks a lot.

Nigel Hickson: (09:01) thanks so much

Philip Corwin: (09:01) Thanks Sam!

Cheryl Langdon-Orr (CLO): (09:01) very helpful indeed... Thanks Sam

Bartlett Morgan: (09:01) appreciate the input Sam

Kavouss Arasteh: (09:01) Iam puzzled and confused by the replies and do not understand why the whole group should be sub ordinated to ICANN staff thoughts

Jeff Neuman 2: (09:01) We should ask Sam to see if there is anything she would like us to address on this issue

Milton Mueller: (09:02) Philip: if basic decisions about who can and cannot reeive DNS service are made by the USG and not the community, we have an accountability problem

Jeff Neuman 2: (09:02) @Milton - That's a little too broad

Milton Mueller: (09:03) Nope

Jeff Neuman 2: (09:03) It's not receiving DNS Services....its receiving services from ICANN

Wale Bakare: (09:03) @Milton, thanks for that.

Kavouss Arasteh: (09:03) Greg, Pls kindly note that we need written answers to the questions raisedeither before the meeting or during ther meeting

John Laprise: (09:03) Milton, at that level there will always be an accountablity issue

Farzaneh Badii (Badiei): (09:03) thanks a lot . Thanks Greg. Bye for now

Pär Brumark (GAC Niue): (09:03) Thx! Several interesting points. Have a Good Day/Night all!

Kavouss Arasteh: (09:03) SAM ,PLS CONFIRM MY REQUEST

Milton Mueller: (09:03) OFAC can stop innocent people from receiving contracted pary service. Not all that broad

Bernard Turcotte - ICANN: (09:03) bye all

Milton Mueller: (09:03) very focused

Cheryl Langdon-Orr (CLO): (09:03) bye ð