

# Jurisdiction Meeting #49 (4 October 2017 @ 13:00 UTC)

## Attendees:

**Sub-group Members:** Chris Wilson, David McAuley, Erich Schweighofer, Greg Shatan, Griffin Barnett, Herb Waye, Kavouss Arasteh, Philip Corwin, Par Brumark, Steve DalBianco, Thiago Jardim, Wale Bakare

**Observers/Guests:** Thomas Rickert

**ICANN Org:** Bernard Turcotte, Berry Cobb, Brenda Brewer, Meghan Healy, Nigel Hickson

**Apologies:** Raphael Beauregard LaCroix, Cheryl Langdon-Orr, Andreea Brambilla, 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)**
  - a. Changes to SOIs
  - b. Identify Audio Only and Phone Number Participants
4. **Complete Discussion of "OFAC Recommendation" (15 minutes)**
5. **Discussion of "Applicable Law and Choice of Venue Recommendation" (40 minutes)**
  - a. Choice of law provision in registry agreements – does the Subgroup endorse the **"Menu" option** – a limited number of choices (e.g., one per region)
  - b. Choice of law provision in registrar accreditation agreements
    - i. Same choices as above? Same result?
  - c. Choice of venue provision in registry agreements
    - i. **"Status Quo"** (Los Angeles, California (or for governments and IGOs, Geneva, Switzerland))
    - ii. **"Venue Menu" option** – a limited number of choices (e.g., one per region) of arbitration venues (all applying ICC rules)
  - d. How should these recommendations be framed?
    - i. Are these only negotiating points between ICANN and the contracted party?
6. **Review of Revised "Proposed Issues" List (5 minutes)**
7. **Review of Schedule and Timeline (5 minutes)**
8. **AOB (5 minutes)**
9. **Adjourn (next meeting 11 October 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:

- OFAC recommendation approved to be submitted independently to the plenary today for consideration at the 11 October meeting including change to Resident section as discussed.
- Choice of Law – update draft text with suggestions made at this meeting and put it up on list for discussion to be finalized on 11 October.

- A draft final report will be provided to the list ASAP but will need to be approved at the 11 October sub-group meeting.
- A final report of draft recommendations for the sub-group will have to be submitted for 11 October 23:59 UTC.

## Action Items:

- **GS to submit OFAC recommendation for 11 October plenary.**
- **GS to update Choice of law draft text per discussions today.**
- **GS and staff to produce a draft final report for consideration by the sub-group on 11 October.**

## Requests:

- Participants review choice of law draft and draft final report.

## Documents Presented

- [Proposed Final OFAC Recommendation for Plenary](#)
- [Applicable Law Choice of Venue\\_Draft Recommendation](#)

## Chat Transcript

Brenda Brewer: (10/4/2017 07:42) Good day! Welcome to WS2 Jurisdiction Subgroup Meeting #49 on 4 October 2017 @ 13:00 UTC!

Brenda Brewer: (07:42) When not speaking, please mute your phone by pressing \*6 (star 6). To unmute, \*6. This call is recorded.

Brenda Brewer: (07:42) Reminder to all, for captioning and transcription, please state your name before speaking and speak slowly. Thank you.

Captioner: (07:51) Hello! Could you please tell me who the Rapporteur will be for this meeting?

Brenda Brewer: (07:51) Greg Shatan

Captioner: (07:51) Thank you very much!

Brenda Brewer: (07:55) Kavouss, requesting dialout to you now. Please stand by.

Kavouss Arasteh: (07:57) Dear Brenda, Hi

Kavouss Arasteh: (07:58) I am waiting to be dialed up

Brenda Brewer: (08:00) Operator should be dialing you any moment, Kavouss. Thank you.

Wale Bakare: (08:00) Hi all, good morning/afternoon/evening

David McAuley: (08:01) I am #4154

Philip Corwin: (08:02) Good day to all in all jurisdictions

Bernard Turcotte - ICANN: (08:02) hi all

Brenda Brewer: (08:05) Kavouss, we have updated number for your hotel. Dial out is still in progress.

David McAuley: (08:05) conversion done

David McAuley: (08:06) and Finn as well

David McAuley: (08:06) apology, that is

Chris Wilson - Amazon: (08:07) Can scrolling be unlocked?

Kavouss Arasteh: (08:08) During the last call of the Group it was said that media reports of actual companies is the wrong way to raise my concerns. Real examples like that are dismissed because the facts are in dispute. That's exactly what happened on the call. It was suggested to use the "Stress Test" method instead of quoting media reports about actual examples. And Steve offered to help to do that (see chat message to at end of the call). It was therefore proposed a stress test as follows: Scenario: A registrar or reseller who has no legal jurisdiction in the US says that US sanctions prevent them from accepting a registration from an Iranian citizen. The Group is therefore invited to accept, as a minimum, the concept of Stress Test and proceed accordingly.

Kavouss Arasteh: (08:15) The above text was said by Steve and NOT me. I JUST put it in the context

Chris Wilson - Amazon: (08:18) Do we have a sense of costs ICANN will incur when seeking OFAC licenses for a specific registry or registrar?

Philip Corwin: (08:19) Q - Does the term "residents of sanctioned countries" just relate to individuals or also encompass business organizations and other entities?

Philip Corwin: (08:19) relate

Chris Wilson - Amazon: (08:19) We note ICANN should be prudent re such costs re general licenses, but no such comment re specific licenses.

Thiago Jardim: (08:19) Greg, I need to consider this further before acquiescing to it.

Brenda Brewer: (08:19) Phone number ending with 5838, please identify name for attendance. Thank you!

Steve DelBianco: (08:20) I am willing to help with Stress Tests if the group wants to do so.

Steve DelBianco: (08:20) Have to drop Adobe and will stay on the dial-in

Thiago Jardim: (08:22) Greg.. as to this change from residents to entities.

Thiago Jardim: (08:23) shouldn't it be specified that these are entities "residing" in the given location... as was the case of residents

Thiago Jardim: (08:23) ?

Chris Wilson - Amazon: (08:24) Ok. Thanks.

Thiago Jardim: (08:26) the given location is the US, juyst to be clear

Kavouss Arasteh: (08:26) Thiago+1

Thiago Jardim: (08:28) The language used in the OFAC website says ""U.S. persons must comply with OFAC regulations, including all U.S. citizens and permanent resident aliens regardless of where they are located, all persons and entities within the United States, all U.S. incorporated entities and their foreign branches"

Thiago Jardim: (08:28) Quoting that to support the point that the relevant place of "residence" is the US

Thiago Jardim: (08:31) Apologies, I realise now that the "residents" here is the one in the recommendation part and refers to sanctioned countries, isn't that so?

Greg Shatan: (08:31) Thiago, yes, I believe that is the instance being referred to.

Bernard Turcotte - ICANN: (08:33) As I have said we will probably not be able to get to OFAC on the 11 Oct meeting

Kavouss Arasteh: (08:35) If everybody share the same views ss yours I follow the majority

David McAuley: (08:38) I support one report but also feel governing law should not be part of it – existentially not sure if I am a rabbit or turtle

Thiago Jardim: (08:40) Fair enough, important issues will be left out and we may not bne in a position to support the final product, and we'll have to dissociate ourselves from it, in order to show that the jurisdictional problem remains for the most part unsolved.

Thiago Jardim: (08:47) It's not related to what you mentioned here, but I'd ask the deletion of the first 6 words of the first paragraph, including its footnote.

Thiago Jardim: (08:49) There is no need to restate the document that is referred to in footnote one, nor is it necessary for the purpose of this recommendation for any of us to venture into an interpretation about the mandate of the subgroup in relation to matters that go beyond the recommendation at hand

Thiago Jardim: (08:49) Further, if the subgroup submits this recommendation, it stands to reason that this is within the mandate of the subgroup.

David McAuley: (08:51) I agree to delete first six words - do not see this effort as aimed at ICANN's overall accountability

David McAuley: (08:52) yes

Thiago Jardim: (08:53) Cheers David

Kavouss Arasteh: (08:53) Thiago +1

Thiago Jardim: (08:53) I'd appreciate if you could do so.

Philip Corwin: (08:59) Regrets, must depart for GDPR webinar/bye all

Wale Bakare 2: (09:01) I agree with Kavouss

David McAuley: (09:01) no offense Kavouss, my friend

Thiago Jardim: (09:01) +1, Kavouss

Bernard Turcotte - ICANN: (09:03) Time check - 27 minutes left in call

Wale Bakare 2: (09:03) Unfortunately, i need to switch to GDPR webinar now, bye.

David McAuley: (09:04) There will be future round of gTLDs though possibly, with new regsitries and possibly new registrars

Thiago Jardim: (09:04) I don't think there is sufficient support for David's suggestion.

David McAuley: (09:05) no surprise there with that check

David McAuley: (09:10) Someone just came by and asked me something - sorry I am lost as to where we are now

David McAuley: (09:10) thanks Greg

Bernard Turcotte - ICANN: (09:14) Time check 15 minutes left in call

Bernard Turcotte - ICANN: (09:20) time check 10 minutes left in call

David McAuley: (09:20) The joys of the MS way

Bernard Turcotte - ICANN: (09:22) Please mute if not speaking

Thiago Jardim: (09:24) Discussions on the list is needed, certainly.

Thiago Jardim: (09:24) are\*

Bernard Turcotte - ICANN: (09:26) yes

Bernard Turcotte - ICANN: (09:26) OFAC

David McAuley: (09:27) Some full report, but not fulsome report

Bernard Turcotte - ICANN: (09:31) canadian thnaksgiving on Monday!

David McAuley: (09:32) Happy holidays Bernie

Bernard Turcotte - ICANN: (09:32) bye all

Herb Waye Ombuds: (09:32) Thank you from Canada... best regards all.

David McAuley: (09:32) Thanks Greg, staff, and all

Pär Brumark (GAC Niue): (09:32) Thx all! Bye!