

# Staff Report of Public Comment Proceeding

## Recommendations on ICANN Jurisdiction

**Publication Date:** 16 February 2018

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### Public Comment Proceeding

Open Date:	14 November 2017
Close Date:	5 January 2018 Extended to 14 January 2018
Staff Report Due Date:	15 February 2018

### Important Information Links

<a href="#">Announcement</a>
<a href="#">Public Comment Proceeding</a>
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## Section I: General Overview and Next Steps

The Cross-Community Working Group (CCWG)-Accountability-Work Stream (WS) 2 on the ICANN Jurisdiction project obtains its mandate and scope from ICANN bylaws and the CCWG-Accountability, WS1 Final report which included Recommendation 12 the following:

*As part of Work Stream 2, the CCWG-Accountability proposes that further enhancements be made to a number of designated mechanisms:*

- *Addressing jurisdiction-related questions, namely: “Can ICANN’s accountability be enhanced depending on the laws applicable to its actions?” The CCWG-Accountability anticipates focusing on the question of applicable law for contracts and dispute settlements.*

Annex 12, which details Recommendation 12, also included the following recommendations with regards to Jurisdiction:

*At this point in the CCWG-Accountability’s work, the main issues that need within Work Stream 2 relate to the influence that ICANN’s existing jurisdiction may have on the actual operation of policies and accountability mechanisms. This refers primarily to the process for the settlement of disputes within ICANN, involving the choice of jurisdiction and of the applicable laws, but not necessarily the location where ICANN is incorporated:*

*Consideration of jurisdiction in Work Stream 2 will focus on the settlement of dispute jurisdiction issues and include:*

- *Confirming and assessing the gap analysis, clarifying all concerns regarding the multi-layer jurisdiction issue.*
- *Identifying potential alternatives and benchmarking their ability to match all CCWG-Accountability requirements using the current framework.*
- *Consider potential Work Stream 2 recommendations based on the conclusions of this analysis.*

*A specific Subgroup of the CCWG-Accountability will be formed to undertake this work.*

In this context the Jurisdiction sub-group produced 7 recommendations in two broad categories:

Recommendations Relating to Office of Foreign Assets Control (OFAC) Sanctions (4)  
 Recommendations relating to Choice of Law and Choice of Venue Provisions in ICANN Agreements (3)

The sub-group will review its recommendations in light of the public comments made and will make its final recommendations to the CCWG-Accountability-WS2 Plenary.

## Section II: Contributors

*At the time this report was prepared, a total of fourteen (14) community submissions had been posted to the forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.*

### Organizations and Groups:

<b>Name</b>	<b>Submitted by</b>	<b>Initials</b>
ALAC	Bastiaan Goslings	ALAC
GNSO-BC	Steve DelBianco	BC
GNSO-ISPCP	Christian Dawson	ISPCP
GNSO-NCSG	Rafik Dammak	NCSG
GNSO-RRSG/RYSG	Stéphane Van Gelder - RySG	RYSG
Government of Denmark	Finn Petersen	G-DK
Government of France	Dalila Rahmouni	G-FR
Government of Italy	Rahul Gosain	G-IN
Government of Russia	Yulia Elanskaya	G-RU
I2 Coalition	Christian Dawson	IIC
ICANN - Board		Board
INTA	Etienne Sanz de Acedo	INTA
Middle East ICANN Community	Tijani BEN JEMAA	MEIC

### Individuals:

<b>Name</b>	<b>Affiliation (if provided)</b>	<b>Initials</b>
John Poole	domainMondo.com	JP

## Section III: Summary of Comments

*General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).*

Many of the comments were supportive of many of the recommendations – however a number of issues were noted with respect to some of the recommendations. Some of the major points were:

- Concern by a number of Government commenters that the recommendations are insufficient to address the basic issues of ICANN jurisdiction issues.
- Concern by the ICANN board relative to implementability of some of the recommendations.
- A split of opinions regarding the recommendation to provide a forum to continue these types of discussions.

#### **Section IV: Analysis of Comments**

These inputs will be considered by the Jurisdiction sub-group which will produce an updated set of recommendations. These recommendations will be included in the Draft Final Recommendations of the CCWG-Accountability-WS2 which will be published for public comment in March 2018.