

PROPOSALS FOR JURISDICTION SUBGROUP QUESTIONNAIRE

	Alternative Formulations (from emails & meetings)
<p>Proposed Preamble</p> <p>The newly-adopted ICANN bylaws created several Work Stream 2 accountability subgroups. One of them, the subgroup on Jurisdiction, is posing the questions below for community input into the subgroup’s deliberations.</p> <p>As directed by Bylaw Article 27, Section 27.1(b)(vi) and to the extent set forth in the CCWG-Accountability Final Report, the Jurisdiction subgroup is addressing jurisdiction-related questions, including how choice of jurisdiction and applicable laws for dispute settlement impact ICANN's accountability.</p> <p>As further background, the CCWG Accountability tasked this subgroup with addressing questions focused on jurisdiction of contracts and dispute settlements (Final Report, paragraph 06).</p> <p>Specifically, it asked the subgroup to engage in:</p> <p><i>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. [Final Report, paragraph 234]</i></p> <p>The subgroup’s remit is more particularly described in Final Report, Annex 12, paragraphs 25 through 31.</p> <p>To help the subgroup in these endeavors we are asking you to consider and respond to the following specific questions. In this regard, the subgroup is asking for concrete, factual submissions (positive, negative, or neutral) that will help ensure that the subgroup’s deliberations are informed, fact-based, and address real issues. The subgroup is interested in all types of jurisdiction-related factual experiences, not just those involving actual disputes/court cases.</p>	<p>Alternative 1 (from last subgroup meeting #14) (use only first 2 paragraphs and last paragraph):</p> <p>The newly-adopted ICANN bylaws created several Work Stream 2 accountability subgroups. One of them, the subgroup on Jurisdiction, is posing the questions below for community input into the subgroup’s deliberations.</p> <p>As directed by Bylaw Article 27, Section 27.1(b)(vi) and to the extent set forth in the CCWG-Accountability Final Report, the Jurisdiction subgroup is addressing jurisdiction-related questions, including how choice of jurisdiction and applicable laws for dispute settlement impact ICANN's accountability.</p> <p>To help the subgroup in these endeavors we are asking you to consider and respond to the following specific questions. In this regard, the subgroup is asking for concrete, factual submissions (positive, negative, or neutral) that will help ensure that the subgroup’s deliberations are informed, fact-based, and address real issues. The subgroup is interested in all types of jurisdiction-related factual experiences, not just those involving actual disputes/court cases.</p> <p>Alternatives 2 & 3 are based on an objection contending that the Preamble mentions only one part of the group’s “mandate”:</p> <p>Alternative 2: Just mention the subgroup’s mandate “as described in Annex 12” without describing it; Annex 12 can then be annexed or linked in to the questionnaire (as in fact it already is).</p> <p>Alternative 3: Have a more balanced set of excerpts, rather than mentioning one part of the group’s jurisdiction related mandate and not others. This refers to the following part of the proposed preamble.</p> <p>“Specifically, it asked the subgroup to engage in:</p> <p><i>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.”</i></p>
<p>Proposed Questions:</p>	
<p>1. Has your business, your privacy or your ability to use or purchase DNS-related services been affected by ICANN's jurisdiction* in any way?</p> <p>If the answer is Yes, please describe specific cases, situations or incidents, including the date, the parties involved, and links to any relevant documents. Please</p>	<p>Alternative 1: Has your business, your privacy or your ability to use or purchase domain name-related services been affected by ICANN's jurisdiction* in any way?</p> <p>Alternative 2: Has your ability to use domain name-related services been affected by ICANN's jurisdiction* in any way?</p>

* For these questions, “ICANN’s jurisdiction” refers to (a) ICANN being subject to U.S. and California law as a result of its incorporation and location in California, (b) ICANN being subject to the laws of any other country as a result of its location within or contacts with that country, or (c) any “choice of law” or venue provisions in agreements with ICANN.

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note that “affected” may refer to positive and/or negative effects.	
<p>2. Has ICANN's jurisdiction* affected any dispute resolution process or litigation related to domain names you have been involved in?</p> <p>If the answer is Yes, please describe specific cases, situations or incidents, including the date, the parties involved, and links to any relevant documents. Please note that “affected” may refer to positive and/or negative effects.</p>	
<p>3. Do you have copies of and/or links to any verifiable reports of experiences of other parties that would be responsive to the questions above?</p> <p>If the answer is yes, please provide these copies and/or links.</p>	
<p>4. What are the advantages or disadvantages, if any, relating to ICANN's jurisdiction*, particularly with regard to the actual operation of ICANN’s policies and accountability mechanisms?</p> <p>Please support your response with appropriate examples, references to specific laws, case studies, other studies, and analysis. In particular, please indicate if there are current or past instances that highlight such advantages or problems. In terms of likely future risk, please mention specific ways in which U.S. or California laws safeguard or interfere with, or may be used to safeguard or interfere with, ICANN's ability to carry out its policies throughout the world.</p> <p>For any disadvantage identified, please identify alternatives (including other jurisdictions), if any, where that problem would not occur. For each such jurisdiction or other alternative, please specify whether and how it would support the outcomes of CCWG-Accountability Work Stream 1, identify the risks of those jurisdictions or other alternatives, and discuss the risks associated with changing from the current situation.</p>	<p>Alternative 1: What are the advantages or disadvantages, if any, relating to ICANN's jurisdiction*, particularly with regard to the actual operation of ICANN’s policies and accountability mechanisms?</p> <p>Please support your response with appropriate examples, references to specific laws, case studies, other studies, and analysis. In particular, please indicate if there are current or past instances that highlight such advantages or problems. [DELETE REST OF QUESTION]</p> <p>Alternative 2 (proposed as a potential question 5): What are the advantages or disadvantages, if any, relating to changing ICANN’s jurisdiction*, particularly with regard to the actual operation of ICANN’s policies and accountability mechanisms?</p> <p>Alternative 3: What are the advantages or disadvantages, if any, relating to changing ICANN’s jurisdiction*, or providing possible jurisdictional immunity, particularly with regard to the actual operation of ICANN’s policies and accountability mechanisms?</p> <p>Alternative 4: What are the advantages or disadvantages, if any, relating to ICANN's jurisdiction*, and of any possible alternatives, particularly with regard to the actual operation of ICANN’s policies and accountability mechanisms?</p> <p>Alternative 5: What are the advantages or disadvantages, if any, relating to ICANN's jurisdiction*?</p>

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