CCWG-Accountability Work Stream 2 Issues Jurisdiction Questionnaire

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?
   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.

Yes. In 2013-2014 Italy was directly involved in the so-called ".wine issue".
Italy and European Union recognize the protection of Geographical Indications (GIs)[1] through a very detailed regulation.

The *de facto* non-recognition of GIs by US, and consequently by ICANN for example in its Registry Agreement and Uniform Domain Name Dispute Resolution Policy (UDRP)[2], caused almost two years of intense debate among GAC members (US, Australia and New Zealand against the rest of the GAC), between GAC and the ICANN Board, between Governments and ICANN[3].

In line with the American approach to the GIs, domain names which consist, contains or unduly evoke GIs, have not been accorded consistent protection as those defined in the International Treaty or the European Regulation.
For that reason, such domain names can be easily registered and used in a deceptive manner.

Italy asked for protecting GIs by reserving the registration of their respective domain names to the rightholders, according to the TRIPS provisions, but ICANN was reluctant to impose such safeguards to the candidate Registries.

In the end .wine issue was closed not in a satisfactory but at least acceptable manner for Italian rightholders, but this could serve as a good example to show how the US jurisdiction of ICANN affected the Italian business.

2. Has ICANN's jurisdiction* affected any dispute resolution process or litigation related to domain names you have been involved in?
   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.

- [1] The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration
- The Agreement on Trade-Related Aspects of Intellectual Property Rights
- Regulation (EU) No 1151/2012 of 21 November 2012
- Regulation (EC) No 1234/2007 of 22 October 2007
- Regulation (EC) No 110/2008 of 15 January 2008
- Council Regulation (EC) 1601/91

[2] The process which regulates the disputes that arise in gTLDs when a second level registration conflicts with an intellectual property right

[3] See for example https://www.icann.org/en/system/files/correspondence/giacomelli-to-chehade-crocker-19jun14-en.pdf

Yes, for the .wine issue, Italy filed two Reconsideration Requests[4], one of which was signed by the then Minister of Economic Development, Ms. Federica Guidi[5]. Both the Reconsideration Request were rejected [6]

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? If the answer is yes, please provide these copies and/or links.

4a. Are you aware of any material, documented instance(s) where ICANN has been unable to pursue its Mission because of its jurisdiction?* If so, please provide documentation.

4b Are you aware of and able to document the existence of an alternative jurisdiction where ICANN would not be so prevented from pursuing its Mission? If so, please provide documentation.

In general, conflicts of jurisdiction on the Internet might have implications with respect to the "EU acquis", e.g. as regards data protection and geographical indications;

For that reason it is necessary that an Independent third party studies possible conflicts of laws and jurisdictions in relation to the Internet and, on that basis and if warranted, consider options for action in order to prevent these conflicts and to solve them should they occur.

Rita Forsi
Italian GAC Representative
Director General
Ministry of Economic Development

[4] https://www.icann.org/en/system/files/files/request-italian-government-18apr14-en.pdf
[5] https://www.icann.org/en/system/files/files/request-italian-government-09apr14-en.pdf
[6] https://www.icann.org/en/system/files/files/recommendation-european-commission-et-al-14may14-en.pdf