**Comments of the Ministry of Telecom and Mass Communications of the Russian Federation on the Cross-Community Working Group on Enhancing ICANN Accountability (WS2) draft recommendations on jurisdiction.**

Russian Federation welcomes the opportunity to comment the report “[Draft Recommendations on Jurisdiction](https://www.icann.org/en/system/files/files/ccwg-accountability-ws2-jurisdiction-14nov17-en.pdf)”. We would like to thank all participants of the Subgroup for their efforts and inputs to the report.

First of all, we would like to notice support of recommendations related to the choice of law and venues, which provide flexibility of law provisions in registry and registrar contracts. Recommendations that are to make ICANN to take any steps to reduce the effect of OFAC sanctions against foreign governments are noted with appreciation as well, but can be recognized only as a first attempts to handle the multi-layer objective of ICANN jurisdiction challenges.

We support the inclusion of Annexes with the dissenting opinion of Brazil and the proposed issues list, which was supported by stakeholders during ICANN 60 and provide rich food for further work.

At the same time we would like to express our major concerns, which have been early presented during broad discussion of ICANN jurisdiction issues, including public session at ICANN 60. We believe that report falls short of the objectives envisaged for Work Stream 2, and that its recommendations only partly mitigate the risks associated with ICANN’s subjection to U.S. jurisdiction, which makes the adoption of the report unacceptable. This is the position of several governments reflected in [GAC Communique (ICANN 60, Abu-Dhabi)](https://gacweb.icann.org/download/attachments/27132037/GAC%20ICANN60%20Communique_Final.pdf?version=5&modificationDate=1511302067000&api=v2) [[1]](#footnote-1).

Taking in account the high risk that OFAC sanctions against foreign governments would harm large number of ordinary Internet users and businesses in sanctioned countries, we consider the recommendations proposed by the Subgroup for the corresponding ICANN actions are limited in the ability to tackle possible negative effects since the principle of «best efforts» provides no guarantee that ICANN would be able to adequately address the problem.

Russian Federation would like to suggest the Subgroup to continue to engage with development of relevant recommendations including broader types of immunity from US jurisdiction that could prevent ICANN from being subject to unilateral political or regulatory interference.

As well as to consider the option of withdrawing ICANN from US jurisdiction either partially or completely, including Brazil proposals on the issue of partial immunity as a solution when all issues relating to the national interests of States and interstate issues are addressed in the event of a conflict in international jurisdiction.

We believe that if the Subgroup did not constrain the proposed recommendations due to restrictions of US jurisdiction as a basic condition, it would allow to work out a more comprehensive solution for jurisdiction issues based on more options, which can possibly find wider choice of solutions, taking into consideration that larger number of issues been identified by the Sub-group in the [List of Proposed Issues for Jurisdiction Subgroup Consideration](https://docs.google.com/spreadsheets/d/1zAMj3Oz8TEqbjauOyqt09Ef-1ada9TrC7i60Mk-7al4/edit#gid=0)[[2]](#footnote-2). It would be useful to continue the work of the Subgroup or other appropriate group or process that should be established for continuation of this work with analysis of these issues.

Besides issues, referenced in this list, we recommend to examine the issue of sustainability of PTI being based in the same jurisdiction as ICANN, as a critical point for stability of Internet technical and operation system.

Russian Federation proposes to ICANN leadership and broader ICANN communities to support and encourage a wider participation of international legal teams balancing the formed majority of US-based expertise.

We believe that it would be useful if final recommendations will based on the following principles:

**Independence:** to exclude any unilateral interference with the functioning of the Internet critical infrastructure and/or the operating activity of ICANN and to prevent erosion of the rights and obligations defined by the mandate;

**Sustainability:** to have a high degree of stability and to eliminate the possibility of the impact by short-term international or national factors;

**Trust:** legitimacy of any legal governance and dispute resolution systems depends on the degree of trust of the participants for the process, decisions and outcomes, therefore, recommendations transparency, accountability, subsidiarity and impartiality of solutions suggested for ICANN jurisdiction should be ensured;

**Universality:** to incorporate international experience of regulation and enforcement in high level operation and management of Internet.

First of all, adequate mechanisms should be proposed to protect the interests of Internet users in case of sanctions.

Russian Federation realizes that the ability of ICANN to fulfill its mission as a global DNS coordinator and policy maker of the Internet potentially contradicts the need to follow the requirements of the national legislation of a single state.

We also see contradictions with major international consensus like for example Tunis Agenda for the Information Society, which have stated that countries should not be involved in decisions regarding another country’s country-code Top-Level Domain.

Collisions could negatively affect the atmosphere of trust for DNS services as well as the security and connectivity of the global Internet.

Having a unique status, protecting public interests, ICANN can offer more acceptable mechanisms of immunity as a solution to this problem, more effective than working on the principle of "best efforts" in case of sanctions

Any participants of the ICANN work processes should not be obliged to follow OFAC sanctions only because they have a contract with ICANN.

ICANN should always commit to the policy of non-discriminatory attitude to all parties involved in the process of coordination and development of the world-wide Internet.

1. https://gacweb.icann.org/download/attachments/27132037/GAC%20ICANN60%20Communique\_Final.pdf?version=5&modificationDate=1511302067000&api=v2 [↑](#footnote-ref-1)
2. https://docs.google.com/spreadsheets/d/1zAMj3Oz8TEqbjauOyqt09Ef-1ada9TrC7i60Mk-7al4/edit#gid=0 [↑](#footnote-ref-2)