

CCWG-Accountability Work Stream 2
JURISDICTION SUBGROUP

PRE-ICANN57 STATUS UPDATE AS OF 30 OCTOBER 2016

1. Executive Summary.

- a. The Jurisdiction Subgroup has based its work on Annex 12 of the CCWG-Accountability final report. This has proved somewhat challenging, as there are ambiguities in this text that lead to some lack of clarity regarding both the scope and goals of the Subgroup.
- b. The group initially looked at the topic of “confirming and assessing the gap analysis” and the topic of changing ICANN’s headquarters or incorporation jurisdiction. For reasons discussed below, the group put these topics to the side.
- c. The group has been examining the “multi-layers of jurisdiction” as set forth in Annex 12. A document is in process and will be discussed at iCANN 57. A draft of this document accompanies this status update.
- d. The group identified a topic that is clearly “in scope”: *The influence of ICANN’s existing jurisdictions relating to resolution of disputes (i.e., “Choice of Law” and “Venue”) on the actual operation of policies and accountability mechanisms.* The group is also working on a draft document discussing this topic, with the goal of determining whether there are any issues raised by these jurisdictions. If issues are raised, potential remedies will be examined. A draft of this document accompanies this status update.

2. Confirming and Assessing the Gap Analysis.

- a. Annex 12 of the CCWG-Accountability final report states the following about the work of this Subgroup: “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.”
- b. Work in the Subgroup on “confirming and assessing the gap analysis” was hampered by lack of clarity in identifying the “gap analysis” mentioned in Annex 12, in particular a lack of clarity on the scope of such “gap analysis.” As a consequence, the group’s deliberations were largely about scope and not about confirmation and assessment.
- c. It was decided that work on a substantive question that is clearly “in scope” could benefit the group’s efforts to identify, confirm and assess the Gap Analysis. Therefore, we have put this task to the side and will revisit it after work on a substantive issue that is clearly “in scope.”

3. Changing ICANN's headquarters or incorporation jurisdiction

- a. After some initial discussions, the Subgroup determined that changing ICANN's headquarters or incorporation jurisdiction will not be further investigated at this time. However, if an issue is identified by the Subgroup during its work, and the Subgroup

can't find another solution to resolve this issue, we will revisit and examine this concept in the context of the identified issue.¹

4. Multiple Layers of Jurisdiction.

- a. Annex 12 asks the subgroup to clarify “clarifying all concerns regarding the multi-layer jurisdiction issue.” In order to do so, it was important to define the multiple layers of jurisdiction, both generically and in the context of ICANN.
- b. We have done substantial work on a document defining the Multiple Layers of Jurisdiction, both generically and in the ICANN context. This document also contains some initial discussions of the influence/effect of ICANN’s existing jurisdictions.
- c. This document is clearly a “work in progress” and does not yet reflect consensus.
- d. Work on this document continues. A deadline of 12:00 UTC on October 30 has been set for a “stable draft” prior to ICANN 57. The document will be circulated at that time.
- e. A copy of this document as of the time of this Status Report accompanies this Status Report. This should be updated with the “stable draft” when that is circulated.

5. Identifying an “In-Scope” Substantive Topic for Our Deliberations.

- a. We have identified a substantive topic that is clearly “in scope” for the Jurisdiction subgroup. The topic is:
 - i. *The influence of ICANN’s existing jurisdictions relating to resolution of disputes (i.e., “Choice of Law” and “Venue”) on the actual operation of policies and accountability mechanisms.*
 1. Choice of Law refers to the governing law for a dispute, whether chosen by the parties or determined by “conflict of laws” rules.
 2. Venue refers to the physical location (if any) of the forum for a dispute, as well as the type of forum and the provider of that forum.

6. Document discussing “The Influence of ICANN’s existing jurisdictions...”.

- a. We have begun work on a document exploring “the influence of ICANN’s existing jurisdictions relating to resolution of disputes (i.e., “Choice of Law” and “Venue”) on the actual operation of policies and accountability mechanisms” and have made reasonable progress.
- b. Further progress on this document is critical, as this is a core “deliverable” by this group.
- c. This document is also clearly a “work in progress” and does not yet reflect consensus.

¹ Subgroup member Parminder Jeet Singh has asked to be “disassociated” from this statement.

- d. Work on this document continues. A deadline of 12:00 UTC on October 30 has been set for a “stable draft” prior to ICANN 57. The document will be circulated at that time.
- e. A copy of this document as of the time of this Status Report accompanies this Status Report. This should be updated with the “stable draft” when that is circulated.