

## REVISED WORK PLAN AND SCHEDULE FOR JURISDICTION SUBGROUP

### 1. GENERAL APPROACH

- a. The Subgroup will identify **Issues** before it goes on to explore **Remedies**.
- b. There must be broad agreement in the Subgroup that a proposed issue is in fact an **Issue** and that the **Issue** is one that falls within the remit of the Subgroup.
- c. For each **Issue**, the group will then look at proposed remedies.
  - i. The group should not discuss a **Remedy** until an **Issue** has been identified that requires discussion of that **Remedy**.
  - ii. The Subgroup needs to consider how a proposed remedy would resolve the **Issue** (or fail to resolve the Issue or even make it worse)..
  - iii. The Subgroup also needs to consider the effects and consequences of the **Remedy**.
  - iv. The Subgroup needs to consider how the **Potential Remedy** would enhance ICANN's accountability (or have no effect on ICANN's accountability or even hamper ICANN's accountability).

### 2. OVERVIEW OF WORK AND DOCUMENTS TO DATE

- a. The Subgroup worked to Identify each of the Multiple Layers of Jurisdiction, including:<sup>1</sup>
  - i. The "influences" of "multiple layers" of ICANN's jurisdiction(s), i.e. how each of the multiple layers affects ICANN's accountability mechanisms and the actual operation of policies (in ways that affect ICANN's accountability).
    1. These influences may be positive (the effect on ICANN's accountability mechanisms and the actual operation of policies enhances ICANN's accountability), neutral or negative (the effect on ICANN's accountability mechanisms and the actual operation of policies hampers ICANN's accountability).
  - ii. The Subgroup did not reach agreement on the scope of the Subgroup's work, so a topic was chosen that was clearly within scope.
  - iii. The Subgroup agreed to first discuss and try to answer the following question "What is the influence of ICANN's existing jurisdiction(s) relating to resolution of disputes (i.e., governing law and venue) on the actual operation of ICANN's policies and accountability mechanisms?" (the "Influence of ICANN's Dispute Jurisdiction" document).
    1. This topic was chosen because the Subgroup could agree that this topic was within the scope of the Subgroup.
    2. The Subgroup spent considerable time on this document.
    3. The document remains a work in process.
- b. The Subgroup discussed whether the CCWG could ever recommend that ICANN change its place of incorporation or headquarters location.
  - i. The Subgroup did not agree on an answer.
    1. However, the Subgroup did agree that this was being proposed as a remedy, and should therefore be *set aside* until an **Issue** is identified that would potentially be remedied by one or both of these proposals. (See "General Approach," above).

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<sup>1</sup> Underlining indicates a document prepared by the Subgroup.

- c. The Subgroup began discussing one hypothetical proposed issue, dubbed Hypothetical #1.
  - i. The Subgroup spent quite some time on this document.
  - ii. This document remains a work in process.
- d. The Subgroup developed a Questionnaire for the community to provide factual information that would help inform the Subgroup.
  - i. The Questionnaire was published February 9 and the response period closes on April 17.
  - ii. A small group has been formed to review and evaluate responses using a method to be proposed by the small group and approved by the Subgroup.
- e. The Subgroup also developed a series of Questions for ICANN Legal.
  - i. The Questions were sent to ICANN legal on March 2.
  - ii. Responses were received on April 10.
- f. The Subgroup began a comprehensive review of the litigations in which ICANN has been a party (listed on ICANN's website).
  - i. Members of the Subgroup will volunteer to review all of the litigations.
  - ii. A summary sheet was developed to be completed by the reviewer of each case.
  - iii. The cases will be reviewed with the entire Subgroup.
  - iv. This project is currently underway.
- g. The Subgroup stopped active deliberation on the Influence of ICANN's Dispute Jurisdiction and Hypothetical #1 documents until the responses were received from the Questionnaire and the Questions for ICANN Legal, and until the Litigation Review was completed, for the following reasons.
  - i. The Subgroup would be better able to move forward on these documents with the additional information provided by these inputs.
  - ii. The documents remain open for contributions by the Subgroup. If there are substantial contributions they will be discussed by the Subgroup.

### 3. OPEN ISSUES

- a. Scope of the Subgroup has not been resolved.
  - i. Need to better define questions to answer and work to be done.
  - ii. Need to clarify "mandate" of the Subgroup, including "gap analysis" to be "confirmed" per Annex 12.
  - iii. Need to clarify deliverable(s).
  - iv. Need to revise timeline and target.

### 4. WORK PLAN AS OF APRIL 11, 2017 GOING FORWARD

- a. Review and evaluate questionnaire responses
  - i. Establish protocol for review and evaluation
  - ii. Initial review and evaluation in small group
  - iii. Complete review and evaluation in Subgroup
  - iv. Questionnaire response date closes
  - v. Goal: Complete by end of month
- b. Review and evaluate responses from ICANN Legal
  - i. Responses received April 10
  - ii. Initial walk-through on Subgroup call April 11
  - iii. Further consideration of responses

- iv. Consider need for follow-up questions to ICANN Legal
- v. Consider need for third-party legal advice on certain aspects of questions and responses
- vi. Goal: Complete i-iv before before end of month
- c. Continue review of ICANN's litigation
  - i. Summary sheets being completed by Subgroup volunteers
  - ii. Discussed on subgroup calls
  - iii. Data will be aggregated to observe trends
  - iv. Goal: Complete by end of month
- d. Subgroup revisits issue of Scope of the Subgroup
  - i. Previous discussions on scope should be reviewed prior to discussion
  - ii. Any lists of proposed issues should be reviewed
    - 1. Proposed issues should be acknowledged even if there is no consensus
  - iii. New inputs or views should be solicited
  - iv. Ample work should be done on the list
  - v. This should not be a complete rehash of prior discussions
  - vi. Group should discuss scope and come to a decision on the Scope of the Subgroup and the questions to be answered by the Subgroup
  - vii. Agenda for Scope meeting should be circulated approximately 7 days in advance to promote maximum participation
  - viii. A deliverable should be prepared reflecting the deliberations and outcome
- e. Subgroup needs to re-set and follow the "General Approach" much more closely
  - i. Identify **Issues** before exploring related **Remedies**.
  - ii. Subgroup must have broad agreement that a proposed issue is in fact an **Issue** and that the **Issue** is one that falls within the **Scope** of the Subgroup.
  - iii. For each **Issue**, the group will then look at proposed remedies.
    - 1. Don't discuss a **Remedy** until there's an **Issue** that requires discussion of that **Remedy**.
    - 2. Consider how and whether a proposed remedy would resolve the **Issue** (or fail to resolve the Issue or even make it worse).
    - 3. The Subgroup needs to consider how each **Remedy** would enhance ICANN's accountability (or have no effect on ICANN's accountability or even hamper ICANN's accountability).
    - 4. The Subgroup also needs to consider the effects and consequences of each **Remedy** .
    - 5. The Subgroup will determine whether to recommend a **Remedy** based on how well it resolves the **Issue**, consideration of the effects and consequences of the **Remedy** (in addition to resolving the **Issue**), and how the **Remedy** enhances ICANN's accountability.
- f. Subgroup needs to better define the potential deliverable.
- g. Using the General Approach, Subgroup applies information from Subgroup Deliberations, Questionnaire, ICANN Legal Responses and Review of ICANN's Jurisdiction to documents in process in order to create deliverable:
  - i. Multiple Layers of Jurisdiction

- ii. "What is the influence of ICANN's existing jurisdiction(s) relating to resolution of disputes (i.e., governing law and venue) on the actual operation of ICANN's policies and accountability mechanisms?"
- iii. Hypothetical #1
  - 1. Any other hypotheticals
- iv. Any other suggested elements of the deliverable agreed to by the Subgroup
  - 1. Results of review of litigation
  - 2. Questionnaire results and evaluation
  - 3. Responses from ICANN Legal
  - 4. Other
- v. Group to prepare a discussion draft of the Deliverable
  - 1. Goal: Present a discussion draft at ICANN59
- vi. Group revises Deliverable after ICANN59
- vii. Consensus Deliverable is sent to Plenary for consideration
- viii. Deliverable put out for Public Comment
- ix. Subgroup evaluates and takes into account comments received
- x. Subgroup revises Deliverable as required
- xi. Further work necessary to arrive at final Deliverable
- xii.

Month	Meetings	Activities and Milestones	Detailed Overview of Work
Aug 2016	1st Meeting	Initial discussion	Discuss process Overview of Issues
Sep 2016	4 Meetings	Subgroup discussions  Begin work on <u>Work Plan and Schedule</u>	Close reading of Staff Paper (as revised by Subgroup) Detailed discussion of Scope Initial discussion of Goals Develop Work Plan Develop Schedule
Oct 2016	4 Meetings	First discussion with CCWG  Begin work on <u>Multiple Layers of Jurisdiction</u>  Begin work on <u>Influence of ICANN's existing jurisdiction(s) relating to resolution of disputes on operation of ICANN's policies and accountability mechanisms</u>	Complete Scope discussion Detailed discussion of Goals Continue work on <u>Work Plan &amp; Schedule</u> Initial discussion of Deliverable Hyderabad Planning
Nov 2016 <a href="#">ICANN57</a>	4 Meetings	Plenary F2F and discussion of work of Subgroup  Initial <u>Work Plan and Schedule</u> completed	Continue work on <u>Influence of ICANN's existing jurisdiction(s) relating to resolution of disputes on operation of ICANN's policies and accountability mechanisms</u>

		Begin work on <u>Questionnaire</u>	Continue work on <u>Multiple Layers of Jurisdiction</u>
Dec 2016	3-4 Meetings	Second discussion with CCWG (first SUBSTANTIVE)	Continue work on <u>Influence of ICANN's existing jurisdiction(s) relating to resolution of disputes on operation of ICANN's policies and accountability mechanisms</u>  Continue work on <u>Questionnaire</u>
Jan 2017	4 Meetings	Refining work; <u>deliverable</u> getting close to ready  Begin <u>Review of ICANN Litigation</u>	Continue work on <u>Influence of ICANN's existing jurisdiction(s) relating to resolution of disputes on operation of ICANN's policies and accountability mechanisms</u>  Continue work on <u>Questionnaire</u>  Begin work on <u>Review of ICANN Litigation</u> (24 Jan)
Feb 2017	2 Meetings	<u>Questionnaire</u> published 9 Feb  <u>Questions for ICANN Legal</u> sent to Plenary on 24 Feb	Finalize and publish <u>Questionnaire</u> Work on <u>Questions for ICANN Legal</u>  Continue work on <u>Influence of ICANN's existing jurisdiction(s) relating to resolution of disputes on operation of ICANN's policies and accountability mechanisms</u>  Begin work on <u>Jurisdiction Hypothetical #1</u>
Mar 2017  <a href="#">ICANN58</a>	3 Meetings	<u>Questions for ICANN Legal</u> sent to ICANN Legal 2 March	Continue review of ICANN's litigation
Apr 2017	3 Meetings	<u>Questionnaire Response Period Closed</u> 17 April  <u>Responses to Questions for ICANN Legal</u> received by Subgroup 10 April	Review and evaluate questionnaire responses (complete by end of month?) Review and evaluate responses from ICANN Legal Continue review of ICANN's litigation (complete by end of month?) Subgroup revisits Scope issue

May 2017	4 Meetings		Return to work on deliverable, with goal of a draft for ICANN59
Jun 2017 ICANN59 26-29 Jun	4 Meetings	<u>Deadline for Plenary 18 (?) June</u> <u>CCWG Plenary F2F 25 June</u>	Complete work on deliverable of draft for ICANN59
Jul 2017	4 Meetings		Revision of draft and submission to CCWG Plenary
Aug 2017	4 Meetings		Public comment period
Sep 2017	4 Meetings		Review comments and revise deliverable for discussion at ICANN60
Oct 2017 ICANN60 28 Oct - 3 Nov	4 Meetings		Complete work on deliverable for ICANN60 Discussion of draft at CCWG Plenary
Nov 2017	4 Meetings?		