BACKGROUND

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ISSUES

1. Choice of law provision in registry agreements

ICANN's Registry Agreement does not contain a choice of law provision.

2. Choice of law provision in registrar accreditation agreements

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3. Choice of venue provision in registry agreements

ICANN's Registry Agreement contains a choice of venue provision. This provision sets the venue to Los Angeles California as both the physical place and the seat of the arbitration (to be held under ICC rules.)

POSSIBLE SOLUTIONS

1. Choice of law provision in registry agreements

It has emerged from the subgroup's discussions that, besides status quo, there are three possible options regarding possible changes to the fact that there is currently no choice of law being made in Registry Agreements.

The first option is the "Menu" option, whereby the law governing the whole of the Registry Agreement is chosen at the moment of its conclusion. Such choice would be made according to a "menu" of possible governing laws. The said menu could be composed of +++

This option has the advantage of +++

The second option is the "California" option, whereby the law governing the whole of the Registry Agreement is set as being the law of the State of California.

This option has the advantage of +++

The third option is the "Carve-Out" option, whereby certain parts of the contract ("some parts of the agreement [which] may require a uniform treatment for all registry operators") are governed by a predetermined law (for example, California) and other parts ("eligibility rules for second level domains, privacy and data protection rules") are governed by the same law which governs the registry as a legal person.
This option has the advantage of +++

2. Choice of law provision in registrar accreditation agreements

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3. Choice of venue provisions in registry agreements

When entering into contracts with registries, ICANN could offer a list of possible venues for the arbitration to take place rather than impose Los Angeles, California as the place (and hence, both the "seat" and physical location) of the arbitration. The rest of the arbitration clause (namely, the rules of arbitration being ICC rules) would remain unchanged.

The registry which enters into a registry agreement with ICANN could then choose which venue it prefers at the moment of the conclusion of the contract.

Having this option open would diminish the cost of litigation for registries, potentially allowing registries to start arbitration procedures at a location which is more amenable to them than Los Angeles, California (although Los Angeles itself could remain an option.)

From ICANN's perspective, the only risk associated with such a change is related to the prerogatives given to the *courts* of the seat of the arbitration in matters of challenge of the award, for example. Indeed, only the courts of the seat are competent to entertain a challenge of the arbitral award.

Finally, the options given in the "venue menu" could correspond to ICANN's own regions (e.g. one venue per region.)

RECOMMENDATION

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