

Comments re: [Recommendations on ICANN Jurisdiction | ICANN.org](#)--CCWG-Accountability WS2 Jurisdiction Sub-group Recommendations

My comments are as follows:

1. General Comments:

The work of this subgroup, like many other working groups in ICANN, suffers from [Complexity Bias](#). I recommend ICANN institute the KISS system (“Keep It Simple Stupid”), to keep the special interests that dominate the “ICANN community” (lawyers, lobbyists, contracted parties, *etc.*), “in check.” A good example of this complexity bias at work within ICANN is the monstrosity developed by the CCWG with the help of three law firms and \$15 million in legal fees, known as [ICANN’s bylaws](#), complete with multiple annexes.

It is a real shame that this subgroup was unable or unwilling to address the real issue of “jurisdiction of ICANN,” *i.e.*, Los Angeles, California, United States of America, as was promised in Work Stream 1. But most now realize that delaying the “jurisdiction issue” to Work Stream 2 (WS2) was a subterfuge to “get the transition done” before any change in administration in Washington, and that the transition itself was a geo-political move by the Obama administration to counter the rising power of China and calls for multilateral internet governance on the international level.

I sympathize with Brazil (dissenting statement in Annex E), as well as those in India and elsewhere, who now recognize they were misled and lied to, to which I can only say, don’t take it personally. You can watch [this video](#) of the former ICANN CEO lying to the French Senate. ICANN has [lied to me](#) and a lot people; it is part of the ICANN corporate and organizational culture. Recognize and acknowledge it, don’t take it personally.

The **real problem** of ICANN’s U.S. jurisdiction was never raised nor addressed by the subgroup. The problem arises from the geo-political decision of the U.S. government which drove the IANA transition:

[DefenseOne.com](#): "In **2014**, the [U.S. cleverly announced](#) it would give control of the DNS database to a non-governmental international body of stakeholders, a process to be run by the **California-based Internet Corporation of Assigned Names and Numbers**, or ICANN. “Now, when China stands up and says, ‘*We want a seat at the table of internet governance,*’ the U.S. can say, ‘*No. The internet should be stateless.*’ They’re in a much stronger position to make that argument today than they were before,” Matthew Prince, co-founder of the company [Cloudflare](#), told *Defense One* at the time.”

To be the host jurisdiction of an organization like ICANN, is a burden on the host country's governmental authorities in policing and enforcing its laws upon the organization, its staff, officers, directors, and contracted parties, unless the host jurisdiction just takes a "hands off" attitude and allows lawless behavior. I fear the latter is now the implicit policy of the U.S. government as evidenced by the recent file closure by the United States Department of Justice Antitrust Division (see [Item 7.01](#)). If so, it may be in the best interests of the global internet community to move ICANN to another jurisdiction outside of the United States. Read more [here](#) and [here](#) (Question 12).

2. Comments as to this subgroup's "recommendations"

This subgroup's recommendations go on for 16 pages (pp.14-29) but really only cover 2 areas: (1) Recommendations regarding **OFAC** and related sanctions issues (pp.14-21) and (2) Recommendations Regarding **Choice of Laws and Choice of Venue** Provisions in ICANN Agreements (pp. 22-29).

(1) **I wholeheartedly agree** with the **OFAC recommendations**, all of which are only common sense and which ICANN org should have addressed long before this subgroup ever needed to address these issues. If these recommendations are implemented and the U.S. proves it cannot accommodate ICANN and its stakeholders, then ICANN will absolutely need to be relocated to another jurisdiction other than the U.S.

(2) **I totally disagree** with the **Choice of Laws and Choice of Venue recommendations**, which are a "*recipe for disaster*" for ICANN. I doubt [Jones Day](#) or any lawyer "worth their salt" would find merit in ICANN being subject to forum-shopping by its "contracted parties"—many of whom are just self-interested profit-seeking entities trying to exploit consumers (registrants) any way they can—or ICANN being subject to split decisions by legal authorities in multiple jurisdictions. Can you imagine the legal fees portion of future ICANN budgets if the "menu approach" was adopted? ICANN already has too many lawyers on its staff, and its legal costs are already too high. These recommendations should be relegated to [File 13](#). ICANN's jurisdiction for "choice of laws" and "choice of venue" is, and should remain, Los Angeles, California, U.S., until such time as ICANN is removed to another jurisdiction.

Respectfully submitted,

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