

**Statement of the Non-Commercial Stakeholders Group on
the November 2017 Recommendations of the
CCWG-Accountability Work Stream 2 Subgroup on Jurisdiction**

1. The Non-Commercial Stakeholders Group (NCSG) appreciates the opportunity to comment on the report of [the CCWG-Accountability Work Stream 2 Subgroup on Jurisdiction](#) ('the subgroup'). The subgroup has put forward recommendations related to two sets of issues: Firstly, issues related to government-imposed sanctions; namely, those administered by the US government by the Office of Foreign Asset Control (OFAC). Secondly, issues related to Choice of Law and Choice of Venue Provisions in ICANN Agreements. In short, we are supportive of the recommendations, however we offer some pragmatic amendments that we believe deserve further consideration by ICANN.
2. The NCSG is the most diverse body in the Generic Names Supporting Organization, with individual and organisational members from 128 countries. As a network of individual and organisational academics, Internet end-users, and civil society actors representing the interests of non-commercial registrants, we represent a broad cross-section of the global Internet community.

Recommendations related to US government sanctions

3. As the global coordinator of the Domain Name System (DNS), ICANN should serve DNS users and domain name registrants globally, regardless of where it may be incorporated or domiciled. As the issues reported by various groups in response to the questionnaire of the subgroup illustrate, there are documented instances where ICANN's jurisdiction has prevented ICANN from carrying out its functions. For example, sanctions imposed by the US government affected domain name registrants and users in certain countries.
4. The NCSG strongly agrees with the proposals of the subgroup to overcome the accessibility issues that US sanctions create, and support measures being taken to provide relief for those who are not on the US government's Specially Designated Nationals (SDN) list. We support all of the recommendations related to OFAC sanctions. However, we believe that the following improvements could significantly increase the value and clarity of the OFAC-related recommendation in the report:
 - ICANN should prioritize obtaining one or two General OFAC licenses. Therefore, we suggest that the recommendation to obtain General OFAC licenses be more clearly prioritized in the report; and
 - As, in our view, this is one of the most important recommendations that ICANN should act upon, we believe that the report should propose a detailed timeline for the implementation of this recommendation by ICANN.

Recommendations on the Choice of Law and Choice of Venue Provisions in ICANN Agreements

5. The NCSG believes that, as it has been highlighted in the report, the recommendations on the Choice of Law should be discussed with the ICANN organization, Generic Names Supporting Organization, and the contracted parties.

Need to discuss jurisdictional issues further

6. Given that the jurisdiction subgroup has indicated that there is no support for moving ICANN's place of incorporation out of California, the NCSG supports further discussions of jurisdiction-related concerns, as the Recommendations propose. We acknowledge that the remit of the subgroup was limited, and that Work Stream 2 could not address all the possible issues due to time constraints. For example, ICANN's jurisdiction might have actual implications on the operation of gTLDs and ccTLDs, yet the subgroup did not discuss these implications within Work Stream 2 since the ccTLD community saw such discussions as within its remit. While some have argued that recent court cases in the US might have resolved some of the jurisdictional issues that were raised for certain ccTLDs, there may be a need to further elaborate on possible jurisdictional challenges, not only within the ccTLD community, but among the ICANN community as a whole.
7. Thank you very much for considering our comments. We are at your disposal should you require clarification on our recommendations.