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## ICANN 57: Summary of High Interest Topic Cross-Community Session – ICANN Legal Advice and How it Supports the ICANN Mission

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To follow is a summary of the High Interest Topic (HIT) session held at ICANN57, Hyderabad (Monday 7 November 2016). This session was originally scheduled on the ICANN Block Agenda as “Transparency on legal advice given to ICANN” but was renamed to “ICANN Legal Advice and How it Supports the ICANN Mission”.

This summary has been prepared by the independent ACIG GAC Secretariat for the information of ICANN's Governmental Advisory Committee (GAC).

It is **not** a formal record of the meeting.

Transcript and recordings from the session:

[http://scho.wd/hosted\\_files/icann572016/e7/I57%20HYD\\_Mon07Nov2016-Q%26A%20with%20ICANN%20General%20Counsel-en.pdf](http://scho.wd/hosted_files/icann572016/e7/I57%20HYD_Mon07Nov2016-Q%26A%20with%20ICANN%20General%20Counsel-en.pdf)

### Chair & Panel

This session was Chaired by Mr. Jay Daley from .NZ. The panel were:

- Mr. John Jeffrey – ICANN General Legal Counsel
- Mr. Chris Disspain – ICANN Board Member

### Summary of Discussions

The purpose of the HIT was to provide the community with a Q&A opportunity with the two panel members. The discussion was grouped around three questions and finished with a general opportunity for Q&A from the floor.

#### Question One

*How does ICANN accommodate for the broader stakeholder community in the legal advice that it gives?*

John Jeffrey advised that he believes that when ICANN Legal provide advice to ICANN, that this is consistent with community interests. This position was challenged by other participants on the floor who perceived that the role of ICANN Legal Counsel was fundamentally to defend the interests of the corporation and that this was mutually exclusive with representing the community. It was generally agreed that this was not a criticism of Mr Jeffrey or the departments conduct, but the result of a natural and healthy tension between the organisation and its many stakeholders, including stakeholders who might disagree with the organisations choices when implementing policy or making process based decisions.

John Jeffrey said that he saw his role as being to ensure that multistakeholder policy ends up being able to be effectively implemented into workable legal contracts between ICANN and Registries. Mr. Jeffrey advised that legal advice was typically sought from ICANN by an SO during a PDP process. ICANN Legal either provide that advice themselves or outsource its provision, depending on the level of expertise available.

Additionally ICANN legal provide advice to the Board in relation to a broad set of matters. When giving advice to the Board ICANN Legal usually provide several options with different legal implications and risk profiles. The decisions rest solely with the Board.

Mr Jeffrey advised that some internal Board Workshops would be opened to the community from 2017 in a focussed effort to become more transparent.

ICANN Legal is also investigating the possibility of making Independent Review Process (IRP) session transcripts publicly available.

### **Question Two**

*Why did it take so long for ICP-1 and GAC Principles 2000 to stop being used in litigation or in other circumstances?*

Mr Jeffrey advised that ultimately there were mistakes made in using these documents as authoritative references. ICANN Legal (like everyone else) also find it a challenge in a multistakeholder community to identify and locate the most current and relevant documents to support their activities. They would like to see the community agree to a standard set of current reference documents or policy and process "standards" that they could use as an authoritative source of information for their litigation activities.

### **Question Three**

*Are there any tensions in the new ICANN Bylaws?*

The issue of contracted parties not being strictly held compliant to the new Bylaws as part of their contract was discussed. ICANN Board and employees are accountable to the Bylaws as are the formal parts of the community. But contracted third parties are typically not. An example of this is where ICANN might choose to use an external Dispute Resolution Provider under contract. That provider could choose to (and probably would) use their own DRP procedures, not ICANN's.

### **Open Floor**

There were a number of questions posed in the open floor session. Some of them related to ongoing legal activities such as .SHOP and .Africa and therefore Mr. Jeffrey declined to comment on these. Another was in relation to whether or not ICANN takes risk-based legal advice into account when selecting meeting locations. The answer was no, ICANN legal do not provide advice to the Board in relation to proposed meeting locations.

## Document Administration

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