

16 October 2018

Independent Compliance Working Party
c/o Fabricio Vayara

Re: Letter of 6 September 2018 from Independent Compliance Working Party

Dear Independent Compliance Working Party,

Thank you for your follow-up letter of 6 September 2018¹ to our previous correspondence and meetings summarizing the agreed-to actions and next steps. Once again, I would like to thank you for your engagement on these issues. I would also encourage you to broaden the dialogue to include other stakeholders who have an interest in the proper functioning of ICANN org's Contractual Compliance Department. We would be happy to facilitate a community-wide dialogue on these important issues.

The following addresses the requests in your letter.

In-depth Data

You asked us to identify the data sources that we use in processing complaints and conducting audits. Our data sources vary depending on the nature of the matter. For externally initiated complaints, the reporter, also referred to as the complaining party, should identify themselves in the abuse report and should also provide a way for the registrar or registry to contact them. Depending on the nature of the complaint, the reporter should provide evidence of the alleged non-compliance with the Registrar Accreditation Agreement or Registry Agreement. For example:

- The specific URL(s) alleged to be the source of the abuse and/or a screenshot of the abuse;
- A description of the nature of the alleged abuse or illegal activity;
- If illegal activity is being reported, information related to the relevant law alleged to be violated, including the applicable jurisdiction along with the basis for believing that the registrar or registry is subject to that law or regulation;
- Documentation showing a formal determination from court, regulatory authority or law enforcement agency; and/or
- Evidence that the registrar has not responded to one or more abuse reports.

¹ The letter has been posted to the ICANN Correspondence page (<https://www.icann.org/resources/pages/correspondence>) with direct link at <https://www.icann.org/en/system/files/correspondence/icwp-to-hedlund-et-al-06sep18-en.pdf>

The other primary data source is through the Contractual Compliance Audit Program, where compliance proactively obtains data from contracted parties selected for audit and reviews those data to verify the contracted parties are compliant with their obligations.

Transparency

Your letter requests greater transparency in communications from Contractual Compliance regarding the handling of complaints. We share the goal of enhancing transparency in this regard. We have undertaken efforts to improve transparency in the direct communications with complainants. For example, as your letter correctly points out, Contractual Compliance once closed complaints with a brief statement that the contracted party demonstrated compliance. As part of our enhanced transparency efforts, the team's responses now provide additional information on how or what led to the conclusion. This information includes an explanation of the portion of the contract or policy that was addressed by the contracted party's response, and, if any part of the complaint is out of scope of the contracts or policies, information regarding why it is out of scope along with alternative sources of assistance.

In our discussion, ICWP indicated that it would be helpful if the status of a complaint or issue in Contractual Compliance's process were publicly available. We have noted this request and informed the different departments responsible for Engineering & IT and product development. As part of our normal development process, ICANN org will be evaluating the request to determine the feasibility/cost/timeline of implementation.

GDPR

Complaints and monitoring efforts regarding compliance with the Temporary Specification are processed using the same [Compliance Approach and Process](#) as other complaint types. ICANN has not created a new complaint type; complaints continue to be received and processed from existing web form submissions. Compliance has adjusted the review of complaints to account for changes in registration data, requesting different/additional information where necessary to review and confirm compliance.

Under section 4.4.2 of the Temporary Specification, a contracted party must provide non-public registration data in response to requests based on legitimate interests not outweighed by the fundamental rights of relevant data subjects, consistent with the GDPR. One of the challenges now facing the community is to establish a uniform mechanism under which contracted parties can receive and respond to requests for non-public Whois data. We strongly encourage the ICWP to provide their input and comments related to the [Unified Access Model](#), desired registrar actions regarding reveal requests, and GDPR-related WHOIS concerns via the Public Comment mechanism and/or the EPDP working group.

Limitations in ICANN agreements with registries and registrars

As discussed during our meeting in Puerto Rico, and as further discussed in our letter of 4 April 2018, there are limitations on the actions that ICANN org can take in addressing DNS infrastructure abuse. Neither the Registry Agreement (RA) nor the 2013 Registrar

Accreditation Agreement (RAA) has enforceable provisions prohibiting or authorizing sanctions against systemic DNS infrastructure abuse. In addition, the RA and ICANN policies as currently defined do not authorize ICANN org to require registries to suspend or delete potentially abusive domain names. Similarly, the RAA does not authorize ICANN org to require registrars to suspend or delete potentially abusive domain names. Instead, under RAA Section 3.18, registrars are required to take reasonable and prompt steps to investigate and respond appropriately to any reports of abuse. Registrars are also required to review well-founded reports from law enforcement and other similarly designated authorities within 24 hours of receipt. There is no requirement in the RAA that requires registrars to suspend or delete reported domains.

The Consumer Choice, Consumer Trust and Competition Review team discussed at length whether ICANN's agreements with registries and registrars should be enhanced to include enforcement tools to mitigate systemic DNS infrastructure abuse. We encourage the ICWG to review the recommendations and participate in the ongoing public comment on the CCT RT's report.

Consumer Safeguards

Below are the links to the Consumer Safeguards webinars and document summarizing the existing safeguards from ICANN's Articles of Incorporation, Bylaws and contracts with Registries and Registrars. We welcome feedback on this document as well as thoughts from your offer to review ICANN's contracts with a fresh perspective. The links are: 11 Sept 2017 [Webinar announcement](#); Document: [Summary of Safeguards Under ICANN's Remit](#); 25 Sept. 2017 [Webinar on Contractual Compliance and Consumer Safeguards](#); and 11 Oct. 2017 Blog: [Following up on a Contractual Compliance & Consumer Safeguards Conversation](#).

Thank you again for the follow-up letter and for your continued engagement.

Sincerely,



Jamie Hedlund
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Managing Director, Washington, DC Office