ICANN76 | Prep Week – Contractual Compliance Update
Tuesday, February 28, 2023 – 18:00 to 19:00 CUN

MAY KIM: Hello and welcome to ICANN Contractual Compliance Program Update. My name is May Kim and I am the remote participation manager for this session. Please note that this session is being recorded and is governed by the ICANN Expected Standards of Behavior. Please submit your questions within the Q&A pod. It will be read aloud and addressed at the end of the presentation. To make comments in the chat, please use the dropdown menu in the chat pod and select "Respond to All Panelists and Attendees" to allow everyone to view your comment.

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Okay. Sorry for the technical difficulties. Just wanted to make sure that we had all of the information necessary for you to see in the chat. Then I will go over the agenda. One second, please. Sorry for the technical difficulties. Let's move on to the agenda for today's session.

So, today we have the agenda for the Program Update. First, Yan Argrononik, Senior Manager Contractual Compliance Risk & Audit will provide an update on the ongoing full scope registrar obligations audit that was launched in November of last year. Then Amanda Rose, Contractual Compliance Lead, will discuss the enforcement of contractual obligations related to access to non-public gTLD registration data. Leticia Castillo, Director, will then present the enforcement actions related to abuse taken last year and will also provide an update on the formal enforcement actions conducted in 2022. Jonathan Denison, Director, will follow up with policy and working group efforts of the last year. And finally, we will get to the Q&A portion of the session where I will read the questions submitted throughout the session in the Q&A pod and they will be addressed by the team.

With that, I will hand over the floor to Jamie Hedlund, SVP Contractual Compliance and US Government Engagement to provide an introduction of ICANN Contractual Compliance's function and mission.

JAMIE HEDLUND: Thank you, May, and welcome everyone to the webinar. We are eager to share with the community updates on the most recent work of our department. Before the experts from the compliance team delve into

the details, I thought it might be helpful to describe at a high level what it is that we do and why.

The primary purpose of Contractual Compliance is to ensure the gTLD registries and registrars have implemented the policies developed by the community and the commitments that the contracted parties made in their agreements with the ICANN organization.

In doing so, we play an important role in assuring the security, stability, and resiliency of the Internet's domain name system. We carry out our function by addressing complaints that we receive, more than 15,000 last year, through proactive monitoring and through conducting regular audits of registry and registrar compliance with our agreements.

As you'll hear in greater detail, compliance also plays an important role in policy development discussions and negotiations to amend our agreements with the contracted parties. We closely monitor these efforts and provide input as necessary to help ensure that any new obligations are clear and enforceable.

And with that, I will now pass the mic to Yan Agrononik who is the head of our audit and risk for Contractual Compliance. Yan?

YAN AGRONONIK: Yes. Hello, everyone. Yan Agrononik, Contractual Compliance Audit Manager. In November of last year, we launched a new audit round. After the planning was done, we had sent pre-audit notifications to selected registrars that are included in this new round. This is a full-

scale audit. If you don't know what it means, it means that all provisions that are in RAA are considered to be under audit this time. So it's not limited to certain provisions like we did before.

In December, in the middle of December, we sent the request for information to 15 registrars. One new approach in this round is that before the responses have been requested to upload to our vendor, this time we rely on our own system, on ICANN's own system, to accept responses for audit requests.

So, in the middle of December, we sent these requests and we started receiving responses. By middle of January, we received responses from everyone, and with the help of our vendor, we started reviewing files and responses to our requests.

In the middle of February, the beginning and the middle of February, next step is we started sending follow-up emails to auditees that are required to clarify certain questions and certain answers that we receive in order to make sure that what we see as a potential finding is indeed a possible deficiency and not something that we misunderstood.

So, currently, we are receiving responses to those follow-up emails. The plan is, in March, the beginning of March, we will be sending initial audit reports to auditees where we list initial findings that would require either an action on the part of a registrar or a plan on how they propose to remediate the deficiency.

Essentially, it's a full-scale audit and we are reviewing compliance with a number of provisions in RAA [inaudible] policies that are listed on this

slide. If you need more information about the audit approach and what exactly has been audited, I encourage you to go to ICANN Compliance website and find the information relevant to audit program where we have it listed in one page.

AMANDA ROSE: Okay. We can proceed to the next slide. This is Amanda Rose, Contractual Compliance Lead. I, as May mentioned, will be presenting on some of the data we have regarding requests made for access or disclosure of redacted gTLD registration data. We enforce this requirement through currently the provision within the temporary specification or gTLD registration data section 4.1 of Appendix A. That is enforced via the interim registration data policy for gTLDs which requires contracted parties to continue to implement measures consistent with the temporary specification. The applicable provision is to essentially provide reasonable access to redacted registration data. And this is based on a legitimate interest of the requesting party, unless those interests are overwritten by interest for fundamental rights and freedoms of the data subject. And this is based on Article 6.1F of GDPR.

So, through this, we have gathered metrics from the past year. That's January 22 through December. You'll see that we received a relatively low amount of complaints compared to some of the more voluminous queues or complaint types. We received 116 total complaints that involved requests for access to registration data.

The majority of these you'll see were requests by IP lawyers, a small percentage from LEA or law enforcement, and then only eight which

related to Appendix E of the temporary specification. This is requests specifically by UDRP providers to gain access to redacted registration data through their verification requests made directly to registrars.

92 of those were closed as out of scope. Examples of out of scope complaints can include registrations that are under a proxy service where the proxy is the registrant. In such cases, the full registration data is required to be published in the registrar's respective directory services. So that is outside of the scope of Appendix A Section 4.1.

Other types of out of scope complaints are where we don't have evidence to proceed. We may request evidence that a request was submitted, for example, and the reporter would not reply, and in such cases, the complaint would be close.

During this time period, we initiated 31 new investigations with registrars. Again, a large majority of those—58%--were from submissions by self-identified IP lawyers. And just to clarify, how those are categorized as far as whether they're an IP lawyer, LEA, registrant, former registrants, that is a category that's selected at the time of complaint submission and selected by the complaining party. So not something that we, compliance, designates.

We closed 37 open investigations during that time period, and again a large majority, 70%, are related to self-identified IP attorneys.

Finally, we had three remediation plans completed by registrars. Remediation can be related to whether they maybe did not have a process in place for reviewing and responding to requests for redacted

registration data or maybe perhaps they had not been responding to requests that were submitted, that sort of thing.

So, we have detailed metrics available on our dashboard with a link there. I think May has provided it in the chat. And these slides I believe will be available as well. We have added additional detail that indicates whether or the outcome of our investigation with the contracted party when those are opened. And that will say whether a response provided either the requested data or denied access request or the request was deemed to be incomplete. So you can review those type of details on our monthly dashboard and then we will be able to include those once they're a full rolling calendar year.

I'll leave with that. I'll pass it off to Leticia.

LETICIA CASTILLO: Thanks, Amanda. Hi, everyone. This is Leticia Castillo. Registrars' obligations related to abuse contacts reports and related records are described in Section 3.18 of the Registrar Accreditation Agreement, which is the agreement that registrars have with ICANN and pursuant to which they act as the registrars for gTLD domains.

And these abuse obligations are to take [inaudible] steps to investigate and respond to any abuse reports. There also requirements to review reports within 24 hours where these are filed by law enforcement and other authorities within the registrar's jurisdiction.

The obligation to display abuse contact and a description of their abuse procedures for you just to know how to submit abuse reports to the registrars and how those reports will be handled.

And the obligation to maintain records related to the abuse reports the registrar receives and provides such records to ICANN upon notice.

Last year, we received 3,786 new complaints related to these obligations and we sent over 853 related notifications to registrars. The specific questions and requests that we include in each notification depend on the details of the case to ensure such case is fully addressed.

For instance, if the complaint refers to a registrar not displaying an abuse contact, our notification to the registrar will request that the contact is added to the webpage.

The most common complaints we receive here, though, refer to reports submitted to the registrars involving allegedly abusive domains. In this case, we request from the registrar an explanation and supporting records concerning how the registrar investigated and responded to [inaudible] report. We request as much information as it is necessary from the registrar to make sure that we have evidence of compliance and we documented it.

We also generally review the registrar's published abuse procedures to ensure any actions here are consistent with those, and all to obtain and document evidence of compliance.

Last year we closed 694 investigations with the registrars after obtaining such evidence of compliance, and approximately 4% of the

cases the registrar suspended the domain name or hosting services. This is where the registrar also provides the services for the domain.

We issued two breach notices, two formal breach notices to registrars who failed to demonstrate compliance with their abuse obligations and were presented with three remediation plans from different registrars.

Just a quick note. A remediation plan can be presented for any type of complaint, Amanda was mentioning before, and it's requested when we determine that a non-compliance impacts additional names, users, registrars and that the root cause must be addressed to prevent its continuation or recurrence.

For instance, if we are investigating an abuse complaint, we discover that the registrar does not have a process or personnel in place to monitor and respond to abuse reports. In addition to addressing the complaint itself, we request a remediation plan from the registrar. Normally, in this case, it will entail to put that personnel and process in place all to ensure it will comply with its abuse obligations moving forward, so any future abuse report without the need of being contacted by ICANN Compliance. We tracked and monitored these remediation plans.

Finally, in 2020, we closed 2,982 invalid complaints. For this, we didn't contact the registrars. In approximately 70% of the cases, there was no evidence that the complainant ever attempted to report the matter to the [inaudible] registrar.

A common example is the complainant who attempts to report the domain name to us directly. They ask us, they ask ICANN, to delete or

suspend the domain name. Sometimes they ask us to transfer to a different holder. All actions that we cannot take.

For these cases, we provide an explanation of our role and any other information that can be helpful. For example, how to find out who the registrar is and where to look for its abuse contacts and to let us know if they still need assistance after reporting the matter to the registrar.

In approximately 5% of the cases, the domain name was already suspended at the time we were reviewing the complaint. Then there were other smaller percentages like duplicate complaints or evolving country code domain names, for example.

The next slide summarizes the formal enforcement actions taken last year. For context, as Jamie was mentioning before, we received over 15,000 new complaints last year which added to all existing cases across all policies and agreements that were ongoing at the time we received the new ones.

And across all complaint types, most cases were closed within the informal resolution stage of our process, which generally comprises three notifications and two phone calls to which we communicate to that contracted party, meaning the registrar or the registry operator what's necessary to demonstrate compliance.

For the most part, contracted parties do timely provide evidence of compliance at that point and the case is closed. And the evidence requested again will depend on the specific details of the complaint and the related contractual obligations that we are enforcing.

If the formal resolution process is exhausted, we escalate the matter to the formal resolution stage where a notice of breach is issued to the contracted party. The notice is published on a website. It states the specific areas of non-compliance, what's needed to cure, and by when. Failure to timely and fully address these notices may result in suspension or termination of the registrar accreditation or the initiation of termination proceedings for registries.

So, last year, we issued ten breach notices that include failures to comply with different obligations such as providing WHOIS services, escrowing registration data, implementing UDRP decisions or investigating and responding to abuse reports. Two escalated to suspension of the registrar's accreditations for three months, and in both cases the suspension period was later on extended. And we terminated five registrars for failure to cure breaches.

At the bottom of this slide, and May added it to the chat as well, there's a link to the page where you can review the published notices of breach if you want to. Happy to answer questions of course at the end. And now I am going to hand it over to Jonathan Denison for the update of policy working groups. Thanks.

JONATHAN DENISON: Thank you. So, this is basically just a quick slide on other activities that compliance is involved in that isn't just processing complaints. This kind of talks about how we're involved with policy and working group support. If you're not aware, we do work cross functionally on certain policy development processes and working groups where compliance

might provide some input, whether it's implementation, how recommendations might be implemented and how compliance can help support these recommendations.

The first bullet there gives some examples. We have subject matter experts who are working on the EPDP, on the temporary specification for gTLD registration data, worked in [inaudible] security, stability, and resiliency review team, recommendations of course, transfer policy review, PDP. We work in other things like the WHOIS disclosure system which we'll find out if the name is going to change there. But we'll be looking at that.

We've been involved with SubPro, IDNs, RPMs, all of those things. We're constantly working in that regard. Otherwise, sometimes we get ad hoc requests from policy and working groups. Typically, it involves data related to the types of complaints we're seeing in any kind of various analyses related to that.

For instance, there you can see a report was created in response to the GNSO Council's request related to enforcement of the EDDP and the ERRP. There's also report for the GNSO DNS abuse small teams request related to the enforcement of abuse obligations.

And once again, we [inaudible] there at the bottom just our metrics and reporting dashboards where we have monthly breakdowns as well as trends over a 12-month period as well. That's basically it. I think we can move on. We'll have plenty of time for Q&A.

MAY KIM: Like I said before, if you have a question, please submit it in the Q&A pod. We had two previous questions in the pod which I can go ahead and read that have been responded to. Owen Smigelski from Namecheap asked, “Will compliance be sending out the audit reports before or after ICANN76? If right before or during, that will be very disruptive."

In response, “Thanks, Owen. Your concern is noted.”

A second question from Rubens Kuhl. “Are there upcoming registry audits?"

And in response, “Yes, there will be a registry audit. The timing will be confirmed after we conclude the ongoing registrar audit.”

It looks like we have two live questions. The first one, [inaudible] “I have a question. If I sent for the website operator and take my complaint in his/her consideration, but all of my complaint I’m removing some of [posts] and advertising in his/her platform and after his/her saliency I sent another compliment to the domain name with screenshots and evidence from our correspondence with the website operator, the domain name sent to me to reconduct with the website operator only and it didn’t take any necessary action with my complaint. Help me to protect me and my company’s rights. Note I am the right owner of trademark registered from the competent authority.”

LETICIA CASTILLO: I can take that question.

MAY KIM: Thank you.

LETICIA CASTILLO: I'm going to try to answer the question. Please let us know if it's not addressing what you're asking. I understand that you submitted a report to the website operator. I'm not sure if you mean the hosting provider or the registrar. And that ultimately did not—you do not consider they address it properly. You're also mentioning trademark rights.

It is hard to give you a complete response without knowing all the details of the complaint, so I would recommend that you submit a complaint to us, and May, you can place a link in the chat. We will review it. There's UDRP proceedings that are available for trademark holders. We can provide the information for those, and if there's any provision within our agreement that can be [inaudible] be addressed, we will do so, provided with any helpful information [we can] provide you with.

MAY KIM: Thank you. We have another question from Romulo Chasin. "Hello. Thank you for the presentation. This is Romulo Chasin from the NextGen program. As I understand, complaints regarding DNS abuse are trending up. Could you please give us any comments in this regard? Thank you."

JAMIE HEDLUND: Thanks for the question. With respect to DNS abuse complaints, I'm not aware that they are trending up. I know that there are studies that have

been done by OCTO showing that the incidents of DNS abuse has actually been trending down.

What we can say about complaints that we receive is that a very large number of them end up essentially being invalid. And by that I mean they are closed without being forwarded to the registrar because they're not fully formed. Often that's because one of the primary requirements of any abuse report is that the reporter first have engaged with the registrar and often we will get complaints where there isn't evidence that the reporter did in fact try to contact the registrar because the actual obligation is for the registrar to investigate and respond, so they must at least first have the chance to do that before there can be a complaint.

There's also instances where we get complaints about abuse on country code top-level domains which we don't have contractual authority.

So really urge folks who do have complaints to read all the requirements that are there on the page and on the complaint form page and let us know if you have any questions. Hope that answers your question. Thanks.

MAY KIM: If anyone has any further questions, please submit it through the Q&A pod. As of right now, there is nothing pending.

All right. Well, thank you for joining us today. I hope you found it informational and you enjoyed this program update.

JAMIE HEDLUND: Thank you, all

LETICIA CASTILLO: Thank you.

MAY KIM: I think we can end the recording. Thank you.

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