ICANN78 | Prep Week – Contractual Compliance Update
Monday, October 9, 2023 – 10:00 to 11:00 HAM

MAY KIM: Hello and welcome to program update for ICANN contractual compliance for ICANN 78 prep week. 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. During this session, questions or comments submitted in the Q&A pod will be read aloud at the time set aside for question and answer. Questions written in the chat may not be read out loud. Interpretation for this session will include English, French, Spanish, Chinese, Russian, Arabic, and Portuguese. Click on the interpretation icon in Zoom and select the language you will listen to during this session. If you wish to speak, please raise your hand in the Zoom room. And once the session facilitator calls upon your name, kindly unmute your microphone and take the floor. Please state your name for the record and the language you will speak. If speaking a language other than English. When speaking, be sure to mute all other devices and notifications. Please speak clearly and at a reasonable pace to allow for accurate interpretation. This session includes automated real-time transcription. Please note this transcript is not official or authoritative. To view the real-time transcription, click on the close caption button in the Zoom toolbar. To ensure transparency of participation in ICANN's multi-stakeholder model, we ask that you sign into Zoom sessions using your full name.

The agenda for today will include the 2022 Registrar Obligations Audit Report and new Full Scope Registry Obligations Audit, metrics and data related to the enforcement actions, and support of policy and working groups efforts and other initiatives of the community. We will save all questions and answers for the end of this session. With that, I will hand the floor over to Jamie Hedlund, the SVP of Contractual Compliance and U.S. Government Engagement.

JAMIE HEDLUND: Thanks, May, and welcome, everyone. Thank you for joining our ICANN 78 pre-webinar. I thought that before we get into the substance of the agenda, I'd give a quick overview about what compliance is and what we do. For those who may not be familiar with us, our role is to ensure that registries and registrars have implemented and comply with the policies developed by the community and other obligations that are in our agreements between ICANN and the registries and registrars. In a way, we are the last step along the policy development process in that we ensure that the policies are in fact implemented. This is the main focus of our role and has become even more important as the community has developed new policies and registration data policy, DNS abuse, if the amendments get adopted, and a new gTLD program.

So how do we do this? Well, we do this through addressing cases that arise through complaints that we receive, through proactive monitoring, and through our twice yearly audits of registries and registrars. A big part of our role is also doing outreach, both to the contracted parties, registries and registrars, but also others in the community who may have issues with their domain names. This is particularly important in parts of

the world where English is not the primary language. We publish reams of data and metrics on our activities and encourage people to visit those. We'll share a link later.

And then one area that has kept us particularly busy recently is working with policy groups, implementation review teams, and other working groups as the community develops policies in these newer areas. Our main concern is not to weigh in on whether a policy is wise or not, or appropriate or not. Our role and our sole focus is to ensure that any new obligations that arise out of new policies or contractual negotiations are clear and enforceable. With that, I will turn it over to Latitia, I believe. No, to Yan, sorry, Yan, head of audit.

YAN AGRANONIK: Hello, my name is Yan Agranonik, and I am the compliance audit manager at ICANN. And my job is to supervise compliance audits. We have, as Jamie mentioned, typically twice a year, one is for the registries and one for registrars. In the beginning of the year, earlier this year, we published the report for a registrar compliance audit that we started in November of 2022. By May of this year, we completed it. 15 registrars were under full audit, this was a full scope audit, meaning every compliance provision was included in the audit. You may or may not know that we're using KPMG as our vendor for audits, so rest assured that people are treated with neutrality and transparency.

So in June, we published the consolidated report, which you can easily find on compliance reports audit page. In addition to that, every auditee, in this case, registrant, received their own individual report that lists

issues if there are any issues, and they've been asked to remediate. Next slide, please.

In August of this year, we launched a new registry compliance audit. We selected 19 registry operators. The criteria why they were selected, you can see there, but in general, it's those registry operators who have never been audited before and have more or less large number of domains. In this case, it's 5,000 or more. So if registry has less than 5,000 domains, it was not included. And the third criteria was that any domains from those registry operators were found on the DAAR report. If you don't know what DAAR report is, it's the ICANN's tool that consolidates data from publicly available block lists that compile the domains that have been reported as being abusive.

So at this point, everybody responded. All the auditees responded to our request for information. We're reviewing responses at this point. We're close to ending the audit phase. And what's going to happen next is, as usual, every auditee will receive their own individual audit report, which may or may not have what we think are issues. And at the end of the audit, we will publish the consolidated public report. And probably, if I'd have to guess, it should be done by the end of this year. That's all I have.

LETICIA CASTILLO: Thanks, Yan. Hi, everyone. This is Leticia Castillo, and I am going to provide an overview of our enforcement actions within the last 12 months for which we have metrics ready, with more detail for the complaint type that is our number one in volume, and has been for a long time, which is abuse.

From September 2022 through August 2033, we received over 14,000 new complaints. Most pertain to registrar obligations, while over 1,000 referred to registry requirements. This does not mean that we worked on 14,344 complaints only. We worked on many more. We received over 14,000 new complaints during this period, which added to all ongoing cases at the time each new complaint was received.

For valid complaints, we sent over 3,000 notifications to registrars and registries, requesting evidence and information related to obligations across all ICANN policies and agreements. The obligations for which we contacted registrars the most were those in section 3.18 of the Registrar Accreditation Agreement, or RAA, which relates to the registrar's abuse report handling obligations. We sent over 996 for this one.

For registries, the number one in volume refer to the obligation to submit to ICANN two reports by the 20th of each month with data for the prior month. These are the transaction and the activity reports and contain data like total number of domains in the top-level domain, quantity of new registrations, renewal, transfers, et cetera. And we sent over 179 notifications in this case.

We resolved 2,263 investigations with registrars and registries because they demonstrated compliance with the specific requirements or remediated a detected issue or provided measures to ensure compliance moving forward, or in a very few cases, we terminated the accreditation.

We closed more than 11,000 invalid complaints. And these are complaints that we review. We communicate with the complainant, often multiple times, but for which the issue or request falls outside of our contractual authority. A very common example is the case where the

complainant confuses our role and believes we have direct access to domains or to manage them. They ask us to renew their domains or to transfer them. A request for us to suspend domains or remove content from websites is quite common as well. And we close these complaints while providing the complainant with any information that can be helpful, including other avenues to pursue, but we do not initiate cases with our contracted parties for these.

We're gonna go to the next slide for details about our number one complaint type in volume, which involves the abuse obligations that are described in section 3.18 of the Registrant Accreditation Agreement. And these abuse obligations are to take reasonable and prompt steps to investigate and respond to these reports. And there are 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 in a description of the registrar's abuse procedures and the obligation to maintain records related to the abuse reports the registrar receives and provide such records to ICANN upon notice. So these are the obligations.

And now from September, 2022, through August, 2023, we received 5,183 new abuse complaints and sent over 996 notifications to registrars. I mentioned before that there is a requirement to review within 24 hours the reports that are filed by authorities within the registrar's jurisdiction. We track those and maintain related metrics. We had one case processed during this time period under these specific requirements. The rest involve other type of reporters. And this is not uncommon. During the calendar year 2022, for example, we did not have any case with a registrar submitted by a law enforcement or other authority within the

registrar's jurisdiction and therefore processed under section 3.18.2 of the RAA.

In all cases, we request from the registrar an explanation and supporting records concerning how it investigated and responded to a specific abuse report. We review all the details of the complaint and the domain and information and records available to assess whether the steps were prompt and reasonable in the response appropriate. And we also generally review the registrar's abuse procedures to ensure any action appears to be consistent with those. During this period, we solved 800 cases with registrars and in approximately 44% of the cases, the action taken was the suspension or the domain of the hosting services when the registrar or the reseller was also the provider, the hosting provider.

During this period, we closed over 4,000 invalid abuse complaints. For this, we didn't contact the registrars as I was explaining before. And approximately 65% of the cases, this included no evidence that an abuse report was ever submitted to the registrar. There were, for example, requests for ICANN to suspend domain names as I was explaining before. In approximately 13% of the cases, they involved country code top-level domains, which are outside of our contractual scopes. ICANN does not accredit registrars for ccTLDs, country code top-level domains. And in approximately 70% of the cases, the domain names—often there's more than one domain in one case—were already suspended at the time we were performing our review. Next slide, please.

And this slide summarizes the formal enforcement actions taken since September 2022. I was saying before that we resolved over 2,000 investigations with registrars and registries. And across all complaint

types, most cases are closed within the informal resolution stage of our process, which generally comprises three notifications and two phone calls through which we communicate to the contactor party the details of the issue and what's necessary to demonstrate compliance. For the most part, contracted parties do timely provide evidence of compliance at that point, and the cases are closed.

However, if the informal resolution process is exhausted, we escalate the matter to the formal resolution stage where a notice of breach is issued to the contracted parties. This notice is published on our website, states the specific areas of noncompliance, what needs to be done to cure, and by when. Failure to timely and fully address this notice may result in suspension or termination of the accreditation for registrars or the initiation of termination proceedings for registries.

Since September 2022, we issue 15 formal notices that included failures to comply with obligations such as providing full service, escrowing registration data, implementing UDRP decisions, or allowing registrants to renew domains. We issue two suspensions and terminated six registrar accreditations. At the bottom of this slide, we have a link to our enforcement page with a published notice in case you want to take a look. And this is all for my update. Now I am going to hand it over to Jonathan Denison.

JONATHAN DENISON: Thank you. This is JD. As you can see from Leticia's presentation, we do spend a lot of time as compliance processing complaints, but we also wanted to highlight the other work we do where we spend not an insignificant amount of time, which is policy working groups and other

initiatives. Since we are compliance and generally, we are the inheritors of any policy language that comes through, as Jamie mentioned earlier, we do take part in the development process in the sense that we often are providing a lot of feedback based on the real world experience we have from enforcing previous policies, whether that be just practical enforcement or the actual language that's developed for policy.

So as I mentioned, generally our main concern is going to be focusing on whether policy is clear and enforceable. And so we're regularly following policy development processes and working groups. And as a lot of you know, it's a lot of hours every week. We are also following along with those. And we also have a lot of metrics and reporting available. So we are often resources for working groups and other initiatives to provide, if there's any questions regarding certain work that we've done, we can provide such metrics and reports. We have a lot of information to give. And in that sense, it is a lot of time that we spend making sure that we're prepared as well for anything in the future that comes down the line.

I think we can probably go to the next slide and just some examples of some of the recent activities we've been involved in. EPDP on the temporary specification for gTLD reg data, transfer policy review PDP. We're involved in IDN guidelines implementation, the current RPM implementation, of course, the RDRS, SubPro, etc. And so we have different people involved based on their subject matter expertise, and we're out there. So if any of you are in working groups, you can always request things from compliance. Otherwise we have, like I said, those metrics and dashboards available there. And I think that's it for me. So we can pass it on to Q&A, I guess.

MAY KIM: All right, thank you. There is one question in the Q&A pod, and I will go ahead and read it out loud. This is from Reg Levy of Tucows. What is the mean time that a case is open between ICANN responses, that is after ICANN has received a response from a contracted party, and before ICANN sends the next responses, including closure to that contracted party? What is the range?

LETICIA CASTILLO: I can take this one, and maybe my colleagues can chime in if they have something to add afterwards. Thanks, Reg, for the question. The answer, it depends. We have certain cases where we receive a response, and the case may be closed same day within a few minutes after receiving the response. We have other cases that entail more detail, more review. Sometimes we're required to go back to the reporter and ask the reporter for information, more evidence, depending on what we have received from the registrar. And of course, we also need to give the reporter or the complainant more time to gather information. So the answer is, it depends. I see Reg's hand's up.

REG LEVY: Thank you, Leticia. This is Reg Levy from Tucows, and I thank you for your answer. What I was trying to get at was what the average is, including both the longest open that you have, or have had, and the fastest closure.

JAMIE HEDLUND: Thanks, Reg. I can start, and then Leticia, please jump in. Those are two very different questions, the average and what's the longest one that's outstanding. And unfortunately, we don't have data that we can share here, but as Leticia said, the length of time that it takes to address a complaint varies depending on the complexity of the complaint and the issue in it, as well as making sure that we have compiled all the information that's required from the reporter and the contracted party. And so there is no average that would be meaningful across all the different complaint queues and complaint scenarios.

REG LEVY: Thanks. For the next one of these, would it be possible to get those averages as well as the ranges for each of the complaint queues? A

JAMIE HEDLUND: s I just said, as I tried to explain, Reg, that those averages would not be meaningful because a number doesn't take into account the complexity of cases, the variability of the complexity. We can look into figuring out how to provide that information that would be meaningful. Of course, when people complain, as they do, about complaints that have been outstanding for a while, we do our best to address them. Unfortunately, not every complaint can be addressed quickly. They're not all the same. And so I don't think what you're looking for would be particularly meaningful or helpful.

REG LEVY: Thank you. I appreciate that you don't think that it would be meaningful, but I would be interested in seeing those numbers so that I could make that determination. So thank you.

MAY KIM: All right, thank you. And we have another question in the Q&A pod. What is the criteria for ICANN compliance to close RAA 3.18 cases? DNS abuse mitigated, domain on server client hold, domain name deleted or other for notices sent to the registrars?

LETICIA CASTILLO: Thank you for the question. And again, the answer is it depends. It depends on the specific case, it depends on what was reported and what the registrar response was. We request a complete explanation and records related to how the registrar responded to the abuse report and that's how we make the determination. I was mentioning that in approximately 44% of the cases, the domain was suspended. In other percentage, the registrar took other actions. For example, they forward the abuse report to the registrar with a request to review and take action. The registrar took action, removed certain content from the website. That's what I'm saying, it depends. We do have cases, although they're not large in number, where the complaint is about not having an abuse contact posted or not having the procedures posted. So in that particular case, the compliance investigation will pertain to that specific requirement and the case will be closed when the registrar demonstrate that that information has been posted on the website. So it depends.

Also wanted to mention, we do publish metrics on a monthly basis and those metrics do include the reasons for closing our cases, including abuse. We'll put a link in the chat so you can see more details about the reasons why we closed each case this past month and previous one. Thanks.

MAY KIM: All right, thank you. There are no other questions listed in the Q&A pod. If anybody would like to raise their hand if they have a question or add something in the Q&A pod, right now would be the time. Otherwise, is there anything else anybody would like to add from compliance to our presentation?

JAMIE HEDLUND: So this is Jamie. The only thing I would add is our door is always open and we urge people to reach out to us, either to me personally or to compliance@icann.org with any questions or concerns that you may have, suggestions, ways you think that we can do a better job of delivering on our role. But thank you all for joining us today and look forward to seeing many of you in Hamburg.

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