
CR - Contractual Compliance at ICANN
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Filiz Yilmaz: The next speaker is from our Compliance Team – Maguy and Pam. Come over and I'll leave the mic to you in a minute while I put your presentation up. In the meanwhile you may start introducing yourselves.

Maguy Serad: Good afternoon, everyone. My name is Maguy Serad. I'm the Head of the Contractual Compliance Department and I'm very pleased to be here at the Newcomers' Track. It's always a great opportunity to market what we do, and I literally mean that – market – because with this audience we tend to celebrate our accomplishments, and we hope to do the same for you today. So with me in the audience I have Pam Little who is also Senior Director on our team. And we have one of our newcomers – he joined our organization a couple of weeks ago. This is Jack.

On the phone we have many of our staff members participating from all different parts of the world. So again, today's objective for us is to give you an overview about Contractual Compliance and we'll leave some time at the end to take some questions.

So our agenda is to share with you what is Contractual Compliance; how do we ensure and enforce our agreements, our contracts; and why is this important? Believe me, to be in the Compliance Department you've got to love what you do because the satisfaction in this job comes from the whole, the big picture. So the big picture for us here is about the ICANN community and about the compliance within the internet and the security of the internet.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

So where are we in the organization? If you have been on the ICANN website – have many of you been on the ICANN website? Have you done some research? Okay, good. So we are part of what is referred to as ICANN staff. We are sitting in the staff part, but look at this wonderful complicated multi-stakeholder model. So we are ICANN staff but we really are providing the service in different ways and fashions. We have multiple stakeholders, different interest groups, different ideas, different expectations.

The Compliance organization as we stand since the last ICANN meeting, we have grown our staff by four additional team members and we are still growing. We still have additional opportunities for growth. So today we are twelve members in the Department, and combined on the staff we can take and address seven languages. Why is that important? It's really important and it comes in handy when we are dealing with the different community members. Sometimes the clarification and the discussion, and understanding the culture and speaking to it in that language and that nuance – it gives it a better understanding and it puts it in a different perspective than just speaking in English, which is a common language for all of us. But sometimes speaking and addressing it in that native language and understanding the issue or the challenge can help us be better at what we do.

The organization today is grouped in four different areas, actually in three big areas. We have a huge core team that consists of nine people that is focused literally on the compliance perspective for both registrars and the registries. We have subject matter experts in different areas but we all collaborate and work as a cross-functional team to be able to deliver to the Contractual Compliance aspect. We have a team member, a Risk & Audit Manager. We put that function specifically on the site but in reality it is embedded in the Compliance Department. It is to serve all of Compliance. The same thing for performance measurement and reporting because it's very important to look at our data, for us to internally address our issues, our challenges, our complaints; but also to be able to communicate and measure and give the community an update on where we are and what's going on.

So Contractual Compliance – and we underlined the word “contract” because if you work in any corporations or anywhere else you know there is a huge aspect of compliance that’s more corporate compliance or different aspects of compliance. But our scope is contractual compliance, so basically we use the contract as our compliance tool. So what’s written in that agreement between ICANN and the contracted party is a set of rules and standards and expectations of performance. So the contract is the basis for our role and our scope.

Who do we have the contracts with? I hope, I’m not sure how many of you are familiar with the words “registrars” and “registries?” Are you pretty familiar with it? Okay. So the registrars are the companies that register the domain names. So today we have about 1000 Registrar Accreditation Agreements signed, so literally these are contracts signed with registrars that we work and oversee and enforce compliance with. There are two types of contracts that exist today – the old one, as it’s referred to, is the 2001 RAA that was initially done and it was an older contract. As the contract expires the new renewed contracts and the newcomers are brought on with the 2009 RAA.

The 2009 contract has better features and has protections for the registrants, more enforcement tools for Compliance to apply. So again, as you evolve and if there’s a new amendment to the contract it will evolve to the new version, but today we work in those two areas of the contract.

It is not only the contract that we look at for compliance. ICANN also has eight consensus policies. They are all published on the website. We will give you a high-level update today of what they are to kind of put it in a framework, but if you are in this community it would be helpful to become more familiar with those policies also. So we provide a link here to the registrar directly, which is on the www.icann.org website also.

Another set of contracted parties are referred to as registry operators. These are the companies that keep the master file for all the domain names – that’s the last three after the dot, whatever the top-level domain name is. These are the registries, and we have 18 registry agreements today. So the top-level domains,

as you might know .com is an example, .net. So that's called the top-level domain and we have 18 agreements today, and the agreements are because even though we have 21 top-level domains some registry operators operate more than one.

So we have this listing also on the www.icann.org website. So today, again the contracts are with registrars and with registries, so this picture – what we're trying to do here is reflect that relationship because as you become more involved in the ICANN community you will be either a registrant, involved in it; or a member of a registrar or working for a registry. Whatever your involvement might be you're going to have some questions or some areas of challenges or discussions around this area here.

So today the big bold arrows you see reflect the contracts we have today with registries and with registrars. Now a registry also has an agreement with the registrar, which means that if a registrar decides to use that top-level domain and market it and sell it, they go into an agreement also with the registry operator to provide that service.

Now many of you probably own, have a domain name or a website or something that you use the internet for. So you are referred to in that scope as a registrant, which is the user or the consumer of this domain name space. So also when you go to purchase or to create a domain name you engage with a service provider to give you or to provide that service to you, and there is an agreement between you and that service provider.

Many registrars also engage with third-party companies – they are referred to as resellers. So please keep that in your mind as you get more involved in the ICANN community. You will learn what is the scope of Contractual Compliance because it's important from a level-setting of that expectation. So again, the scope is with the registrars, registries, even though within the contracts it does carry forward to the registrants in many times how and what they apply in the contract.

So now that you know what our scope is in the complexity of the ICANN model it's going to give you an appreciation of why we picked our vision to be a trusted compliance service provider. You don't become a trusted service provider overnight. It has to be earned. We have, as we showed you on the bigger model how complex and diverse our stakeholder model is. Our multi-stakeholder model is very diverse, with a lot of different community members and stakeholders also referred to as constituents. So in order for us to deliver a service in the Contractual Compliance space we have to base it in facts, on transparency, on communication; and hopefully through that approach we can earn the trust of the community.

How do we ensure contractual compliance? So we refer to it as a "culture of compliance." In our multi-stakeholder model we're trying to implement what we call a bottom-up approach. We have the contracted parties with whom we have these agreements with. We have launched and now it's in pilot phase the bottom aspect of the triangle. You see something referred to as a self-assessment. It's an industry best practice. What it means is basically we took the highlights or the main areas of the contract provisions and we created questions, and we built a questionnaire to help us around an annual audit or an annual self-assessment.

Think of it as a checklist. So basically on an annual basis we expect the contracted party to respond to us with facts, but they could also leverage that to train their own people or to make it as a checklist: "Am I in compliance throughout the year?" So this self-assessment is currently in pilot phase because we wanted to test how easy is the tool to use, how long does it take to respond to it; are the questions easy to understand? And then also we want to assess it from our perspective: are we getting the right information? How long does it take to understand and process the facts that are given to us? What forms and formats are we getting them in?

So this pilot phase which concludes in the next trimester, we will be putting together an analysis of how successful it was, what are some of the lessons

learned and what do we need to do before we launch it as a full-scale self-assessment?

The other areas in the pyramid are the different phases of contractual compliance . We first do them as the preventive, which is also the informal resolution before it becomes a formal resolution. Our objective is to work with the contracted parties to bring them into compliance. However, as we all know, many will comply but you will sometimes have some bad actors, and if they do not comply then we have to move to what we call the formal resolution. So what does that mean from a process perspective?

This picture is not truly a process map. If you've done process maps you know they have to have swim lanes for clear roles and responsibilities, and we have that; but we wanted to put it in a form that is visible to all. What do we do with our contracted parties? When we receive complaints, so on the left side of the graph you will see an intake. We receive complaints in different formats and through our tools that you can also access from our website. Complaints can be logged. Our objective in the long term is to centralize our tools into one complaint system. As the years evolved different systems were added on based on the needs and now we have three different tools we manage, so we hope to consolidate them and we have a plan underway that we're working towards.

But the most important thing is a complaint or a concern is logged through the Contractual Compliance Team. The first thing the team does is evaluate is this within the contractual obligation? Is this notice, is this something that has enough facts that we need to follow up? Or do we need to inquire about it? But the big picture to keep in mind is in the space of preventive, as we call it – the informal resolution – we are collaborating with the contracted parties in a three-step approach. The first step is we ask them to send us information. We can say “This complaint came. Please, we're inquiring is this legitimate? Have you done this?” And if another complaint might be that they have the proof and it's something very specific and very factual we might follow with a notice to a contracted party, saying “This is a notice of your noncompliance. You have X days to provide us proof and to correct it.”

But the idea is we give them three chances and opportunities through different ways. The first and most easy way that we all do today is email. We use email to communicate a lot; we forward the complaint. We ask for specific facts to be responded to by a certain date. If we do not hear and we don't have a response, or we do have a response but not with all the important information that was requested, we follow up with the second step. Also if by the end of that timeframe we do not hear we follow up with the third step. And the follow-up is increased – email plus a phone call, and we end up also with a fax. So we try to approach the different ways of communication to make sure that the message has gotten to the contracted party.

So in that space of informal resolution again, it's collaboration and it's still in what we call good standing. If by the end of the third notice we have not received either the facts, the data or a response we escalate internally within the Compliance Department to enforcement – to enforce the message here. So basically the enforcement then here is done through a breach notice. If you've been on the ICANN website, you go under "Compliance," you will see we do issue breach notices. At this point the public is informed what's going on; we publish on the website. In the informal resolution we do not publish because we really want to work and give the contracted party the benefit of the doubt and time to cure or to fix the problem.

But by the third notice, when we reach a breach we issue it to the contracted party and we publish it on our website. Again, with a breach notice the same thing – they have a certain timeframe to respond and to provide facts and cure the breach. Through the involvement of the enforcement phase, if this is a bad actor and they've had multiple problems or noncompliance the decision is being made do we suspend? That means we stop new businesses but they keep current until they fix the problem, or do we terminate? Those decisions are all fact-based and also based on the history of the contracted party.

So in the big picture you see Compliance split into two main areas – the preventive and the enforcement space. And big picture, since my arrival into the ICANN organization we laid out a three-year plan for us as a team and we

communicated this plan. Again, as a service provider in the space of Compliance we need to report what we're working on, how we're accomplishing it and what we're targeting to get to. So in the 2011 which was last year we focused on our internal assessment – who are we, what are we doing, what do we have in terms of standard operating procedures and all kinds of areas. But now in 2012 we call it the transformation phase. We have a plan that we are implementing for improvements. We're rolling out different newer aspects of standard process and improved tools, improved reporting; and our ultimate goal by 2013 is to reach a consolidated Compliance system and we'll start focusing on continuous improvement.

Pam Little:

Okay hi, can you hear me? I'm Pam Little with the Compliance Team. For the next few slides I will talk about what we do and why it matters what we do. So this slide you can see is the Domain Name System hierarchy, and I hope in the next few slides you'll see why it matters what we do here day-to-day in Contractual Compliance.

The DNS, the Domain Name System, is a very important part of the internet; and the internet's now become a very important part, a critical part of our lives. So can you imagine life without internet? That's really our message, and therefore those actors within this internet ecology all play a very important role to keep the DNS working, the stability and security of the internet.

In our day-to-day work we mainly deal with the contractual compliance, or ICANN Contractual Compliance. Maguy has shown you the contract map we have with contracted parties, which are registries and registrars. So these then reflected the issues that we deal with on a day-to-day basis. So the most common issues, these are examples: trademark disputes, although ICANN Contractual Compliance does not deal with trademark disputes themselves. These are dealt with by our four approved dispute service providers. But we do have then the registrar, once the dispute is resolved, there'll be certain remedies that need to be implemented and registrars might have to implement a UDRP

decision, which is the Uniform Domain Dispute Resolution Policy. And that's when we come into play.

There are also WHOIS inaccuracy issues. Does anyone know what WHOIS means in the ICANN world? Okay. So that's basically the registrant contact information of a domain name or registration data even more than registrant contact. So we deal with a lot of inaccuracy issues. People report to us a domain name, for example pamlittle.com has inaccurate WHOIS, then there are some contractual obligations of what the registrars must do when they receive such a reported inaccuracy claim.

We also deal with a lot of transfer issues. When we say transfer issues, we mean intra-registrar transfer, like I want to transfer my domain name from one registrar A to another ICANN-accredited registrar, B. Sometimes there are issues in that process although there is a clear policy governing how that process should work. We also work with issues coming out of resellers; like you might be registering a domain name not through an ICANN-accredited registrar but through one of those registrar's resellers, and the resellers therefore may not be always doing the right thing – not allowing you to transfer a name or have all sorts of registration issues.

We also have registration restrictions. As some of you may know we have 21 gTLDs at the moment. Some of them are sponsored registries, like for example .xxx, right? Those registries will have a certain charter; it means a parameter on registrants or who can register those domain names in that sponsored registry space. So these are the common issues we deal with on a day-to-day basis, but please note the RAA as Maguy mentioned – that's the agreement between ICANN and the registrars – it does not address the issues arising from domain aftermarket activities. So the RAA mainly addresses issues arising from domain registration, transfer, renewal, deletion; but as you may know there is also a big market out there for domain sale, buy and sell or auctioning. We are not in that space. That basically would be just like a private transaction, and the in-country law enforcement organization or consumer protection agency would have certain rules and regulations applying to those activities.

And that brings me to the next slide. There are a lot of issues arising from using a domain name, which when you see it on your browser is like a website. So these issues – domain use issues – generally are dealt with by law enforcement or consumer protection agencies in various countries. Examples of this are like website content or spam, phishing, malware, cybercrime, etc. So if you want to have a very [rapt] demarcation, ICANN Contractual Compliance and those contracts we have mainly deal with domain registration issues whereas the law enforcement or consumer protection agency will mainly deal with domain use issues. These are general rules but sometimes there are exceptions, but this will be a general guide.

And this is just to share with the community, especially newcomers: some people have some sort of misunderstanding or misperception about what the RAA allows ICANN to do. ICANN is a party to the contract so when things go wrong “Hey, why didn’t ICANN do this? Why doesn’t ICANN do this?” But the RAA does not allow ICANN as a party to that contract to address content on those websites just mentioned in the previous light; or suspend domain names or transfer domain names, or take over a registrar’s operations or terminate a contract without going through those processes that Maguy had mentioned.

We need to go through issuing a notice of breach, and if the breach doesn’t get cured then we’ll move on to maybe suspension and maybe to termination eventually. Or we also cannot access a registrar’s domain name database. So these are all different actors in the DNS ecology – registrars have certain things that they can do technically, registries also, but ICANN does not have the technical or legal authority to do those things.

Maguy mentioned the contracts as well as the ICANN consensus policies. At the moment there are eight ICANN consensus policies that govern different areas. I would not propose to bore you with all of these details of the consensus policies. They are all here and they are all on the ICANN website. These consensus policies are all incorporated into the registry agreements as well as the Registrar Accreditation Agreement; therefore, they form part of those agreements and are applicable to registrars and registries.

I will mention just a couple maybe: the Uniform Domain Name Dispute Resolution Policy is just trying to provide a cost-effective mechanism to resolve satisfying claims. The WHOIS Data Reminder Policy is a policy that requires registrars to send a reminder at least every twelve months to registrants to say “Hey, check your WHOIS contact information and if it’s out of date or inaccurate please correct the data”; the Intra-Registrar Transfer Policy that I mentioned earlier. So these are all very important policies that affect right owners, consumers, registrants, etc. So these are all ICANN consensus policies. There are two consensus policies, #7 and #8 that are specifically applying to registries.

So in the next few slides I will share some of the Compliance data with you, and the data relates to the period from October, 2011, to February, 2012. We are sort of in the second week of March. The ICANN calendar goes with these ICANN meetings. There are three meetings a year, so our reporting period tends to also try to be consistent with those so-called trimesters – so this is what we call T2 data.

Compliance issues: in the last trimester you can see the distribution in different continents. 34% of them were coming out of the North America region; 34% from Europe and 1% from Oceania, which includes Australia where I come from. This slide is to show you out of those complaints what are the main issues or areas concerning those complaints, and you can see they are not really in volume order or particular order. But you can see we received a total in excess of 16,000 complaints, and the WHOIS inaccuracy is the largest bucket of complaints – 9500. We also receive a lot of transfer-related complaints and customer service-related complaints.

Customer service complaints, basically it’s like “My registrar is charging me too much,” “I cannot contact my registrar,” “They are not returning my calls,” this type of thing. These types of things are not spelled out in the contract, in the Registrar Accreditation Agreement. So we categorize them as customer service issues and usually we really cannot deal with them; we just forward the

complaint to the registrar and say “Hey, please get back to the complainant and resolve the issues if you can.”

So these are the different areas we receive the different complaints from. As Maguy showed you, our overall Compliance process is once we receive a complaint we assess whether it is a legitimate complaint, whether it concerns a potential compliance issue. When we say potential compliance issue it means they are within the purview of the Registrar Accreditation Agreement or the registry agreement.

If they are then we will follow-up with the party that is complaining about whether it’s a registrar or registry – mostly it will be a registrar because a lot of them really are from consumers who have the interface or interaction with registrars. So we follow that three-step process that Maguy showed us earlier and shared with you. We will send a notice or inquiry to the registrar saying “We got this complaint from this complainant. Tell us your side of the story – what’s going on?” And if the issue still doesn’t get resolved then we have that internal escalation from prevention to enforcement; and the next step would be the issuing of a breach notice to the contracted party. In T2 we issued two notices of breach to registrars and one suspension notice.

In the next slide you will see a further breakdown of what I said earlier about customer service-type of complaints. They even ask about ccTLDs sometimes, but as you know, ICANN does not have a formal contract with ccTLD operators so really this is not within our contractual authority to address; or other issues such as resellers or spam, or website content. That is outside of ICANN’s scope or Compliance’s scope.

In the next slide I will share with you the demographics if you like of where those complaints come from and how do they compare with where the region’s registration members or the region’s number of registrars. So again, if we take North America as an example, you can see almost 4000 coming from that region but that region has 95 million domain names, and that region has 683 registrars, ICANN-accredited registrars but 117 complaints against those registrars. So

that translates into .004% against the domain registration number and 17.1 against registrar numbers. And you can compare with other regions to see hey, maybe for us we can see maybe we need to pay special attention to a particular region because there's more complaints or compliance issues coming out of those regions.

We also have agreements with registries, but registries, generally our complaints are concerning registrars. We rarely receive complaints about registries. Registries have a contractual obligation to provide monthly reports to ICANN, so based on what they reported to us in the last trimester reporting period there was 100% compliance in relation to DNS, WHOIS availability, and providing equal registrar access to the shared registration system. This one is very important.

The equitable access to registrars: each ICANN-accredited registry has that provision in their registry agreement. So in other words they cannot discriminate against one registrar; every registrar will be provided with equitable access to that shared registration system so that they can all provide the registrar services – those ICANN-accredited registrars. At the moment there are ten registry operators in North America, seven in Europe and one in Asia. That landscape might change quite soon when we have the New gTLDs quite dramatically.

So that's all from me in terms of our sort of operational or activity perspective. We're more than happy to take questions if there are any.

Maguy Serad:

I know we shared a lot of information with you in the first thirty minutes, but as you see on this slide there are many ways to reach us. We encourage feedback and input and questions. If you do have a question or something to talk about with Contractual Compliance please send it to compliance@icann.org. Just add to the subject that line so we know which area it's coming to us from, and we can address it and get back to you on it.

Male: You said that ICANN has no contracts with the ccTLDs. How do you regulate your relationship?

Pam Little: I'm not sure – maybe Global Partnerships could answer that question. My understanding is there are memorandums of understanding; just a very informal documentation. So they still collaborate in terms of the technical coordination between ICANN's management of the root and the ccTLD operating as a ccTLD operator in-country; but there's no formal contract, no enforceable contractual obligation.

Male: You don't consider their accountability framework a contract.

Pam Little: Sorry?

Male: The government, there's a document called a framework.

Pam Little: The MOU, yes.

Male: You don't consider that a contract for you?

Pam Little: That's my understanding. Maybe other ICANN staff could help answer that question? Okay, so we don't consider that as a contract. That is just kind of a collaboration framework.

Male: Thank you.

[background conversation]

Male: Hi, a question? Okay, yes please. What happens if there is a problem between ICANN and a registrant, and you have to suspend or have a suspension of the contract or terminate this contract? What happens with the registration agreement with the registrant?

Pam Little: That's a great question. I'll talk about suspension a little bit first. The suspension of a registrar is not a full suspension; it only suspends two activities of that registrar, which is it means the registrar cannot issue new domain names and cannot initiate inbound transfers. So all other activities remain business as usual during the suspension period, so it's just kind of temporary, like a sanction. That's suspension so it doesn't affect the existing registrations sponsored by that registrar subject to that suspension notice.

When we have a termination or nonrenewal of a registrar we will have, ICANN has developed a bulk transfer process to transfer the domain and all the registrations sponsored by the terminated registrar to another ICANN-accredited registrar. There's a whole documented process on our website. We would actually in some circumstances, there will be an expression of interest to publish for a period, inviting interested registrars to bid to take over those registrations from the terminated registrar – it's all open. And then we will then assess against a set of criteria which registrar is most suited to take over those registrations.

And we do that in a very transparent and open way – basically really our ultimate goal is to protect those registrants. Does that answer your question?

Male: Yes, yes. Thank you.

Male 2: I know this is not really an ICANN subject but I was wondering if you had to deal at all with the domain names issues that have been taking place in the United States against certain copyright infringing sites like MegaUpload.com or the Canadian online site (inaudible) and all of those things?

Pam Little: Yeah, so if you go to www.icann.org now you probably will see our CEO's blog yesterday – we have nothing to do with those.

Male 2: So no country has complained or anything?

Pam Little: Has a country complained to us about those seizures you mean?

Male 2: Yeah.

Pam Little: I'm not aware of the complaints. I have not been involved or seen any complaints, but basically we really have nothing to do with those seizures.

Male 2: Okay, thanks.

Janice Douma Lange: We're going to address a remote query. One of our Compliance staff back in Marina del Rey addressed the question for us on remote but we're going to go ahead and read it out loud so everyone can understand the issue. This came from Matt online: "What is the status of the jobs arbitration? Why has it been nine months since the arbitration has been filed and ICANN has permitted it to lie dormant instead of aggressively prosecuting it?"

The response from Khalil Rasheed of the Compliance Team was "The Compliance Team cannot address internal matters including the status of arbitration proceedings or legal matters involving the organization."

Pam Little: But if you go to the ICANN website I believe there's some posting about this arbitration, so which you'll find the latest – we have as much information as what's published there. Another question online?

Janice Douma Lange: There's actually a question from [Fasah Hassan] but it is in regard to the ccTLD operation, so what it says is "If the ccTLD operator run by the government in a country fails to provide reliable service, can ICANN play a role?" And I can also, Pam, having said that out loud, take the question offline to our ccTLD representatives. And because it's a question here I can also get the answer back.

[background conversation]

Karla Valente: Karla Valente from ICANN staff, can you hear me? Yeah, so no, ICANN cannot do anything regarding ccTLDs. Either they're run by government or they are run by universities or whatever is the entity that runs the ccTLD, because they have sovereignty over their own policies.

Janice Douma Lange: Thank you.

Filiz Yilmaz: Okay. Janice, do we have any more in the chat room?

Janice Douma Lange: Matt is typing back but...

Filiz Yilmaz: Okay, we'll deal with that. Khalil is on the line anyway and you can all join everybody else in the chat room as well. Thank you a lot, Maguy and Pam, for this presentation. Do you want to do a wrap-up at the end of before I close?

Maguy Serad: As usual it's always great to present in this forum. We started doing it at the last ICANN meeting. Thank you for this opportunity and your time, but we do want to encourage you to become active in the community, please. And again, if you have any questions or follow-ups please let us know, and welcome to the ICANN community.

Pam Little: And may I just add one thing? We have a lot of information posted on the ICANN website; the Contractual Compliance webpage has a lot of information as well so if you are interested to know a little bit more about what we do you can visit the website. Thank you.

[Applause]

Filiz Yilmaz:

Well, our next presentation is scheduled to take place in 15 minutes. Normally we would continue because we have our colleagues here, but I don't want to disappoint the people who adjusting their schedules on the remote. So we will take a break; before it was a bit shorter so go enjoy the registration area maybe, a little, and then we'll be back here at 4:00 PM. Thank you.

[End of Transcript]