

Filiz Yilmaz: Hello, some are in from the way to coffee I believe but we will start now because we need to continue and we have only two more presentations. I have my colleagues now from the Compliance Department and they will walk you through the ICANN registries and registrars and their contracts. So I'll leave it to them to introduce themselves and then continue. Thank you.

Maguy Serad: Good afternoon, everyone. We're really happy to be here with you. My name is Maguy Serad. I am the head of the Contractual Compliance Team at ICANN. With me today is Stacy Burnette and Khalil Rasheed.

Today we're going to present to you an overview of Contractual Compliance. So our agenda is basically to share with you what is Contractual Compliance, how we ensure and enforce registry and registrar compliance and why it matters. So if it's alright with the audience I would like to propose to hold off the questions until we finish our presentation. We have allowed for time for question and answer.

So Contractual Compliance – people sometimes refer to us as Compliance, and you see on the presentation we highlight “contractual.” We use the contract as a compliance tool. So we have contracted parties that we work with and we have to abide by

a set of rules and a standard of performance that has been agreed to in the contract.

Why do we have Contractual Compliance at ICANN? The first thing that I would like to point out, sometimes people think of us as we are a regulator or a government agency or law enforcement. We are not. We are not a police here. Why we are here again is we operate with the authority that's given to us through the contract, and it is limited to the contract. Our contracts today are with the registrars.

I know many of you are new to the ICANN world so you're going to hear a lot of wonderful acronyms and words as we go. Registrars is one of our contracted parties, and registrars are the companies that register the domain name. Another contracted party we have is referred to as registry operators and they are in charge of keeping what we call the master file for the domain names that end with a particular suffix.

This chart here, we hope to highlight an overview of Contractual Compliance relationships. ICANN, as I just stated, has contracts with two different parties. I'm going to refer to the top one, the registry, and the agreement there is referred to as the Registry Agreement. ICANN also has a contract with the registrars, and that agreement is referred to as the Registrar Accreditation Agreement. And as you become more familiar with the ICANN world you will find us referring to it as simply RAA.

On this chart you will also see that there are contracts between parties. The registrar, who has a business and is there to sell a domain name, is also contracted with the registrant; and also might be contracted with a reseller who helps them provide the service. Now, there is also a contract between the registry and the registrar.

Now, our scope again is with the registry and with the registrar. These are the contracted parties we work with and we ensure compliance. Today, we have about 995 registrars that have an RAA agreement with ICANN. The registrar agreement is very standard and used consistently across all. We have 18 registry agreements, and we do have 18 specific agreements per registry. We also have the new model that was approved for the new gTLDs, and that agreement is still being finalized.

So how do we ensure and enforce the compliance? Before we dive into that I would like to highlight where we are in this ICANN multi-stakeholder model. We are part of what we refer to as the ICANN staff, and we operate from that area. However, we do collaborate and work with every area of the multi-stakeholder model. Collaboration is very important for the success of this.

This slide here speaks to our vision, mission, and approach, not only in relation to the ICANN vision, mission and approach but I want to put it more in relevance to the audience here. Our vision – Contractual Compliance, our vision is to be a trusted service provider. To become trusted our approach is going to be through prevention – prevention through collaboration, through transparency and communication – but of course there will be

times when we have to enforce the contract if that prevention is not happening.

This slide speaks to the different areas of the Contractual Compliance regime. We are in the process of developing what we call “self-assessments.” That’s the bottom part of the pyramid. It is an industry best standard practice today. We do not have it adopted but we are in the process of developing it. Again, part of the bottom-up multi-stakeholder model: we are all responsible to be in compliance.

The bulk of the activity that my team refers to and is responsible for is the preventative activities. What we mean by that is the monitoring – we have tools that we monitor daily. We have audits that we perform. We also are doing what we call outreach activities, which is more on the education and collaboration to help address and clarify compliance.

Another aspect of the compliance regime is informal resolution. That aspect of it is basically once we have an issue of noncompliance, we collaborate with the noncompliant parties to come to a resolution. If all fails and that collaboration or informal resolution does not happen, enforcement has to happen. So all these steps are very critical in our process, and in the next slide I’ll speak to them a little bit more.

But what has been our focus in 2012? We all know there is a New gTLD Program that’s been approved and is launched, so in our effort to prepare we are now in the process of looking at all of the

processes that guide our day-to-day activities. We want to make sure that the processes are clear, there are no areas of continuous improvement. We are looking at standardizing our procedures. It is very important for us to become more efficient and effective in that area. We're exploring metrics to help us measure and report back to the community, and we are also exploring areas to enhance our communication and collaboration.

This lifecycle in front of us here is speaking to the prevention and enforcement aspect of Contractual Compliance. We start off with inquiry. We hear or we get a complaint, or we find through our monitoring that there is an issue of noncompliance. So we inquire with the party; say "What is this? What's happening? Provide us information." If we do not hear back we inquire a second time and a third time, so there is a timeframe that passes where we allow a response to come our way.

Normally by the second inquiry we have collaboration, and we sort through the issue and get it resolved. If, by the third prevention step nothing has happened or no response to our inquiry, we then escalate it to enforcement where it is a more serious business and it's a breach notice where we specifically state exactly the next steps and by a certain date of a response. Of course, when it all fails there might be a reason to terminate. Sometimes when you are in the breach notice there might be some signs of collaboration and we do want again to make sure that we collaborate and we do that step.

On the team today at ICANN, we are eight fulltime employees and we have three open positions in the audit and analyst role. The combined team, we have about 100 years of experience. We're very lucky – we have an amazing team of experts, lawyers but also compliance experts who guide us through this process. Combined on the team we can take on five languages, guys. We can speak English of course, French, Arabic, Mandarin and Spanish. So we have an awesome team that has used all five languages to collaborate with the community to get us to resolution.

With this slide now I'd like to transfer to Stacy who will take you in a little more detail about the operations and the different areas of compliance.

Stacy Burnette:

Good afternoon, and thank you so much for coming to this session about ICANN's Contractual Compliance program. Before I jump into more details about our program I wanted to poll the audience. By a show of hands, how many of you have ever registered a domain name before? Okay, great. And prior to registering for this conference, how many of you had ever heard of ICANN?

[laughter] We have one of our past Chairmen in the audience and so I know he's heard of ICANN. But that's good. We're happy to know that we have an audience of people who have interfaced with this system, so it's not as if we're speaking to people who don't know what a domain name is. And some of you have even heard of ICANN, so that's a wonderful thing.

Now I want to talk to you a bit about some of the areas that we focus on in the Contractual Compliance program. And Maguy shared with you that we have relationships with registrars and registries, and our goal is to keep amicable relationships intact and ensure that our business partners comply with all of their contract terms.

And so we have a group of people within the Contractual Compliance program that focus on prevention, meaning preventing having to take escalated compliance action concerning one of our business partners. And as part of our prevention activities we engage in consumer complaint management, we investigate claims of noncompliance, we conduct audits and we monitor and address compliance issues as they come to us.

And when we're successful in prevention we don't have as many escalated matters to pursue, and so we put a lot of resources into our prevention activities because it's our goal to maintain good, positive relationships that result in compliance by our partners. However, there are times when we are not successful in getting a partner to comply willingly, and that's when we have to escalate our efforts.

As part of that, we investigate claims of noncompliance, we communicate with our contracted parties; and sometimes we have to issue notices of breach which are forms of escalated compliance, and there are times when we have to terminate some of our partners because they refuse to come into compliance within the time period required by the contract. Next slide, please.

Now, I wanted to add something before Maguy goes. We said we were proficient in five languages; well, Maguy's proficient in three so without her I don't know how we would be communicating with the rest of the world, so it's a good thing we have her.

Our current program overview: we're interested in enhancing our communication efforts. We've just redone our website. We are interested in publishing regular performance metrics which we do currently, and we're interested in enhancing our current reporting so that the information we report is useful to the community and it accurately reflects all of the enforcement activities that we're engaged in.

We also have relationships with law enforcement entities because as you know, there are people who use the internet, and sometimes they might be some of our business partners and sometimes they might have relationships with some of our business partners, who are doing things on the internet that may not be legal. And so we have to refer some of those matters to law enforcement entities for them to address, and so we're developing processes and relationships to ensure that matters concerning law enforcement are appropriately referred to the correct entities around the world.

And this particular slide gives you a snapshot of the number of consumer complaints we received between the months of June and September of 2011. Most of the complaints we receive, almost 60%, do not pertain to matters that we have authority to take action on. And so if someone complains about a registrar charging an exorbitant fee, too much money in their estimation, that's not

something that's covered within the Registrar Accreditation Agreement and as a result we'd have to refer them to a consumer protection agency or they have to try to negotiate with their registrar because that's not a matter in our contract.

But one of the areas where we do have authority to act concerns transferring domain names and those of you who have registered domain names, there may come a time when you are in a conversation with a friend and your friend says "Hey, I registered a domain name for \$5 for the next six years," and you're like "Wait a minute – I paid \$100 for one year." And you may determine "I want to go to another registrar. I don't like my registrar because they're charging me too much money."

And you may want to transfer to another ICANN-accredited registrar, and ICANN created a process for you to quickly transfer your domain name to another registrar when you want to. However, we unfortunately have a lot of complaints come in about registrars not complying with that process that we established and we have to follow up with those registrars and request they take action pursuant to their contract agreement and the policy, the transfer policy. And so that's an area where we get a lot of complaints. Next slide, please.

Another area of focus for the Contractual Compliance program is registrar data escrow, and this is equivalent to being assured that all the data that you type on your computer, if you were assured that it was backed up someplace in the event of an emergency you would feel fairly confident that "Okay, I know my data is

somewhere else. It's backed up someplace and I can access it, and life is still good." However, if you typed very important information on your computer and there were all these documents that were very important on your computer, and you had a computer failure and your information was not backed up, you would be very, very concerned. You might have to take all kinds of measures to recapture that data.

Well, the same thing is true with a domain name and the registration data. If for some reason, the ICANN-accredited registrar that you entered into a contract with goes out of business or experiences some type of failure, ICANN has set up a system to ensure that the registration data for all registered domain names is escrowed to an individual entity not associated with our ICANN-accredited registrars; and in the event of a registrar failure that data can be transferred to another ICANN-accredited registrar.

So you don't have to necessarily lose access to your domain name or lose the use of your domain name during a failure. So this is a very important aspect of our program and when we find that registrars are not escrowing their data we take that matter very seriously, and we escalate when necessary. Next slide, please.

WHOIS access and WHOIS accuracy: whenever you register a domain name, one of the things you have to do is provide information about the entity or person who registered the domain name and a technical content – basic information about who is behind this domain name. There are privacy services so in the event you don't want to provide your information that's available

to you, but every domain name has to have certain registration information associated with that. And that information has to be made publicly available – our contracts require that with our ICANN-accredited registrars.

And so two provisions in our agreement – WHOIS access, meaning all registrars have to make WHOIS information available to the public; and then there are WHOIS accuracy requirements where a registrar must investigate a claim that WHOIS information is inaccurate. And so we monitor our WHOIS access requirements. We have a monitoring tool, an electronic tool that does that and we conduct audits from time to time.

And then for our WHOIS accuracy requirements, we have what's called a WHOIS data problem report system where the public can file a claim that there's an inaccuracy. And we send that information to the appropriate registrar for investigation. And the RAA has investigation requirements that the registrar must comply with, and we monitor that activity as well and take action when appropriate. Next slide, please.

Another important aspect of our program is enforcement of the Uniform Domain Name Dispute Resolution Policy – that's a long name I know, and that's why we call it the UDRP for short. And this provides an alternative dispute resolution process for cybersquatting, and I'm going to try to describe cybersquatting the best way I can. If I owned the trademark for Coca-Cola, and I think we're all familiar with Coca-Cola the drink. If I owned that trademark and I found out that someone registered a domain name

and spelled Coca-Cola very similar to the actual spelling, then I would think that person is attempting to confuse the public and drive traffic to that website. And I would have a claim against them.

This system is set up to assist people who have trademark rights in resolving cybersquatting issues, and it's a cost effective way. It's supposed to be fast, and all of our ICANN-accredited registrars have agreed to comply with this system we've set up to resolve these issues. And so we monitor this compliance concerning all of our ICANN-accredited registrars, and Khalil Rasheed who was introduced earlier, he's our primary person responsible for following up on UDRP complaints and enforcing these provisions in the UDRP and in our RAA contract relevant to the UDRP. Next slide, please.

The Intra-Registrar Transfer Policy: if you recall that pie that we showed you earlier, and I shared with you that the largest number of complaints we receive concern the inter-registrar transfer policy – registrars not freely allowing registrants, people who've registered domain names, to transfer their domain names. And we actively follow up on those complaints and take escalated action when necessary.

So Maguy shared with you what contractual compliance is as opposed to regulatory compliance or legal compliance, so I think we've gone over that with you. This was our agenda in the beginning and we wanted to make sure we hit all the important points.

Okay, so why does all this matter? Well, it all matters because it takes several business partners working collaboratively and following a set of rules and contract provisions to make the domain name system work properly. If our registrars or our registries begin violating their contracts it causes a problem for the entire system.

And you wouldn't experience a seamless use of your domain name if we have registrars who are not doing what they're supposed to do, and that's why we get complaints about transfers – because a registrar is not doing what they're supposed to do. So we all have to work together to make this system work so that you as the end user don't experience any problems and the internet operates the way it's intended to, to be this useful tool for everyone around the world.

So we have some changes that are occurring, some challenges, and that's where you come in as members of the ICANN community. We hope that you'll all become very active in this community. The internet doesn't belong to ICANN, the internet doesn't belong to any one country. It's a tool that we all use, and through this multi-stakeholder process everyone has an opportunity to participate in the future of the internet – how the domain name system will look fifteen years from now.

It's not clear. I mean you're probably going to learn about new generic top-level domains which will allow people to self-select the suffix of a domain name. So for example, someone may apply for the domain name .football, or .music. If you present through an

application that you're legally, technically and financially qualified to manage a new registry, then ICANN would allow you to manage a .football or a .whatever. And so there are all these changes happening, and with change there are always new responsibilities, new business partners that we'll contract with.

And again, we hope you'll be a participant in this process and you won't just come to this meeting and forget about ICANN. You'll continue participating either remotely or looking at our website, at all the different resources that are available. We have one of the most resourceful websites that I know of. If there's anything you want to know about ICANN we try to publish it quickly. So if you want to know more about the Contractual Compliance program you can go to our website; if you want to see the specifics of the contracts we've referred to concerning registrars and registries – that's available on our website. Our complaint resolution processes are published on our website; all kinds of information.

So again, we hope you'll continue to participate. I'm going to turn it back over to Maguy.

Maguy Serad:

Thank you, Stacy. I also would like to take the opportunity, I know this is a large audience and not enough time on the agenda, but we are sharing with you a compliance@icann.org email address that we manage. And if you have any expectations on what is the information that's valuable to you, please send us an email. We refer to those as feedback emails or just getting to know

our constituents and our ICANN community. So compliance@icann.org, title: Feedback, and send us your questions or your expectations and what you see valuable within this.

We also would like to inform you that on Wednesday, if you'd like to learn more about certain topics we have the opportunity, and here's the schedule. We have two scheduled sessions but we also have open sessions for Q&A. So just stop by, meet with us if you have a question or you want to discuss or something. We will be available.

So lastly, thank you again for this opportunity. Questions?

Filiz Yilmaz:

Thank you. If you have questions about this presentation we can take them now as you have the folks here. They are the best answer to those contractual issues.

Male:

Thanks for the presentation. I would like to repeat my questions. Earlier I asked to your colleague what would happen to a domain name listed if my registrar disappeared to my customer? What will happen to my customers if as a domain name reseller, my registrar disappeared? Thank you.

Khalil Rasheed:

Thank you for the question. I just want to be sure that I understood it correctly so I'll repeat it back. Can everyone hear me? Okay.

I think the question was, as a reseller what would happen to your customers if the registrar went out of business? So there's a variety of ways we can answer that question. As ICANN, particularly Contractual Compliance, we deal directly and specifically with our contracted parties which are registrars and registries. So even as a reseller, if you operate through an accredited registrar, that registrar has the same obligations to ICANN.

When a registrar goes out of business, no matter what type of relationship that registrar has with other parties, with respect to ICANN there is a clean process where we transfer the data. If you recall during our slide presentation, and if you even want to go back, my colleague Stacy or it may have even been Maguy discussed the registrar data escrow program. So every registrar is required to escrow data on every domain name that they register, and when a registrar goes out of business there's an orderly transition process that ICANN has put in place so that that data is removed to another registrar.

So essentially, if a registrar goes out of business and you happen to be a customer of that registrar, that registrar's data is transferred to another registrar. Does that answer your question? I can't hear you.

[background conversation]

Filiz Yilmaz: Any more questions?

Khalil Rasheed: He actually had a follow-up, the gentleman.

Male: That's a good point, your answer is quite good. I'm happy with that but I would like just to know if I have the opportunity to choose my own other registrar.

Khalil Rasheed: Okay, so the answer to that is no, not initially. When a registrar goes out of business, that orderly transition process does not enable everyone to go and choose a registrar at that time. Instead, all domain names that were managed by that registrar are transferred to a new registrar after which you can transfer your domain name pursuant to the process as you see fit. I think we had one question behind you as well.

Male: How long is that going to be?

Khalil Rasheed: It would depend on each specific situation. But I'll tell you what, and this is in general, if you go to the ICANN website and you go to the Compliance page in particular, we have frequently asked

questions related to when registrars actually go out of business. So I think there was a question from the gentleman behind him.

Celia Lerman: Hi, my name is Celia, I'm an ICANN fellow from Argentina, from Latin America. Do you hear me?

Khalil Rasheed: Welcome. I hear you well, welcome.

Celia Lerman: Okay, my question was I saw that you had your complaints and your feedback from people valued by topics. I was wondering if you have any surveys on the geographic data – where do these complaints come from? I'm just asking because we're wondering how many, in particular I'm interested in the UDRP: how many people have UDRP complaints divided geographically, if you have any data on that?

Khalil Rasheed: Thank you for the question. I think everyone heard pretty clearly: she'd like to know by geographic region how many UDRP complaints we get. And there are two things: first, on Wednesday the Contractual Compliance Team is actually going to have a session whereby you can come and interact with us on a variety of questions. So I'll note that and you show up, and I'll try and have a more specific answer. But generally we do keep statistics, and

my colleague has a slide that is not in this presentation but part of a later presentation which we'll also make available Wednesday.

As the one who handles UDRP complaints in general myself, I can say they come from a diverse range of regions, from Asia to Latin America, so I don't think there's one specific area that is disproportionately receiving UDRP complaints at this time. I look forward to seeing you Wednesday.

Filiz Yilmaz:

Thank you. Rob, do we have remote questions? Do you need the mic? No, we don't have any remote? No we don't.

Khalil Rasheed:

I think the gentleman had a question.

Victor Ndonnang:

Thank you very much. I'm Victor from Cameroon and I am a fellow. My question is very simple: in order to avoid all the problems of complaints for gTLDs, what should a registrant do to avoid complaints? I am a reseller as well and I have some clients that send me emails, and they want ten names for instance. If I register those names and they have complaints because there is a brand somewhere in the world, there's a company that has the same name somewhere in the world, am I liable? Is that a problem for me?

Maguy Serad: We're going to answer to you in English so that everybody can understand, if you don't mind, Sir. The question is that if a registrant is trying to register through a registrar, how and what can he do to be compliant? As a registrant you...

Victor Ndonnang: I'm sorry, so that I do not get any complaints coming from brand names' owners. If someone wants a domain name and I'm not sure if that name is a brand somewhere in the world, and I do register that domain name am I liable for that? Can I get into trouble because of that?

Khalil Rasheed: So as I understood it, what you're asking is as a registrant, how can you avoid running afoul of brand owners' trademarks when you register a domain name? That's how I understood the question correctly. I think with respect to the UDRP, and you can go to www.icann.org/udrp, and with respect to brand owners and ICANN, this is how we deal with brand owners. So we don't assess liability; we look at the UDRP. And what the UDRP says is that if a registrant of a domain name infringes a trademark of a brand owner, a trademark holder, they can potentially lose that domain name. And that is the liability that the UDRP hands out.

There are actually three elements to a UDRP claim which I won't go into here, but you can go to the www.icann.org website. So the ultimate result is at worst, under the UDRP you could lose your domain name registration should it violate someone's trademark.

You would not be liable through ICANN in a court of law; however I couldn't speak on behalf of a brand owner, what other steps they might take in terms of civil penalties, etc. Does that answer your question? And feel free to come Wednesday as well if you have more specific questions and follow-up.

Filiz Yilmaz:

Yes, just on that note we have one more question here and then another there, and then after these two questions can I please ask you to come to these sessions to ask further questions – because we have another session – so that we don't go further on, okay?

Bassirou Gningue:

Hi, Bassirou Gningue from Senegal. I have a question regarding uniform dispute resolution policy. How do you interact with WIPO in your activities?

Khalil Rasheed:

So WIPO is one of four ICANN-accredited dispute resolution providers. So what ICANN has done is actually set in place through the bottom-up consensus policy the UDRP, so we have established the policy and made it a part of our contracts with registrars that they must comply with the UDRP. What this means is that when a registrar sells a domain name, whoever purchases that domain name agrees to comply with the UDRP. Now what that means is they agree to actually submit to the arbitration process should someone accuse them of violating their trademark.

WIPO is one of four organizations when people are accused that actually arbitrate these proceedings. So if you're a domain name registrant and a brand owner says "Hey, you're violating my trademark," they can go to WIPO, they can go to the National Arbitration Forum to check arbitration court or the Asian Domain Name Dispute Resolution Center. And each one of them is actually accredited by ICANN to hear that actual arbitration, issue a ruling which the registrar must then comply with.

Bassirou Gningue: Okay, thank you.

Male: Hello. My name is [Idi Ikey] from Comoros, and my question is I have an account for (inaudible) and I was contacted one day by a registrar who told me that they had some request of domain names like telecom.sn, telecom.something else, and if I had registered with .sn. Is it possible for me to contact you for the procedure, to start the procedure – who should I talk to? Should I talk to you, should I talk to ICANN?

Maguy Serad: I'm going to repeat the question. So you find that this... Can we contact you? What do you want to do exactly?

Male: Yes, to change for that so that the second domain name disappears.

Maguy Serad: He has a domain name registered with a top-level domain but then he finds out that the same domain name but a different top-level, like a .com or .net . So can he contact us because he wants to make sure that that is a unique domain name for him? It's two different extensions, like the suffix.

Khalil Rasheed: As I understood the question, it pertains to if you have the same second-level registration and different top levels. So you had maybe yahoo.com and yahoo.net – is that the question? Okay. So that is the question.

So now unless you're a trademark holder and that other top-level domain is violating your particular trademark, then I would doubt that you would have a remedy through ICANN. You may have a remedy through another court or party but not through ICANN. In fact, the domain name system as it's currently set up is designed to actually allow for competition, allow for innovation; so the idea of enabling one party to have a monopoly by registering at the second level in one top-level domain is something that we would not encourage exclusivity of.

And Wednesday we can speak further about it. Thank you.

Filiz Yilmaz: Thank you, everybody. Thank you a lot, the Compliance Team. We really appreciate that, thanks.

Maguy Serad: Thank you.

[Applause]

Filiz Yilmaz: So now we will have this last session. This is standing between you and the celebrations after this. We will have a presentation from Karla and Trang, my colleagues for the New gTLD Basics. It will take just a minute for me to upload their presentation and then they will continue immediately.

[End of Transcript]