
SINGAPORE – Contractual Compliance Program Updates and Q&A Session

Wednesday, February 11, 2015 – 09:00 to 10:15

ICANN – Singapore, Singapore

MAGUY SERAD:

It's 9:05. We are compliant with our time keeping. Good morning everyone. This is Maguy Serad, Contractual Compliance. Thank you for joining us this morning. This is the Contractual Compliance Program Update. It's open for everyone in the ICANN community to join us and learn more about Compliance activities since the last ICANN Meeting. If you are a newcomer and you want to learn more in details, and it's not making sense to you, please let us know. We'll be more than happy to spend time with you afterwards. Around the table we should have a combination of contracted parties and different ICANN community members joining us.

Before we get started, I'd like to recognize the Compliance Team, whose joining us remotely and in the room with me. I want to thank you very much for your passion and commitment to quality and good work at ICANN. I want to thank Allen for his leadership of our team. I also want to thank several members with us here today. We've got our KPMG partners in the audit program, who've been delivery on schedule, on budget, on time, good quality work on the audit program. We also have Iron Mountain, who we work with very much on the registrar audit space. If I've forgot anybody, I hope not. I'm talking about the people who are providing the different services.

Last but not least, I want to thank all of you for joining us again this morning. This is our meeting for all of us. We're going to provide a brief update, but then we want to open it for Q&A. if we're going fast

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through a slide, let us know, raise your hand. It's an interactive session. Before we get started I'd like Allen to address the audience. Jump in? All right. Next slide please. What have we done since ICANN 51? Slide four please. Since ICANN 51 audit activities continue. The new Registry Agreement audit program results have been published. It's a result of auditing 14 gTLDs. We're in the process of getting ready to publish the Contractual Compliance Annual Report.

All the reports can be found at the links provided on this slide. I'm going to ask Jennifer to provide an update related to the registrars and the RAA compliance efforts in that space.

JENNIFER SCOTT:

Thanks Maguy. Good morning everyone. I'm Jennifer Scott, Manager of Contractual compliance, and I'll be highlighting some of the updates regarding registrars and the registrar accreditation agreement, or RAA. Here's a list of some of the lessons learned that we've seen with regards to the RAA. They touch on WHOIS, abuse, domain renewal, UDRP and transfer, but today I want to highlight some of the issues and a hot topic of the abuse reporting requirements.

The abuse handling reporting requirements of the RAA are laid out in section 3.18. There are three subsections of that provision, and two of them are laid out here. The first one is 3.18.1 and that is regarding abuse reports that come from anyone worldwide, and that's contrasted with reports coming from law enforcement, which are handled under section 3.18.2. The requirements of each section are highlighted here. The standard for 3.18.1 where the reports are coming from non-law enforcement require registrars to reasonable and prompt steps to



investigate and respond appropriately to any reports of abuse. What that entails will be a case-by-case determination and vary depending on what the abuse report is about.

On the next slide we'll highlight some of the reasonable steps that we've seen registrars taking in response to abuse reports. Conversely, on section 3.18.2, regarding law enforcement reports, those have to be reviewed within 24 hours by the registrar. Registrars also have to have a dedicated abuse email and telephone contact information for receiving law enforcement reports. This slide details how ICANN processes abuse complaints that they receive. The initial threshold for an abuse complaint is that the reporter must show ICANN that they've already contacted the registry with their abuse report and sent it to the registrar's abuse contract.

If it passes that threshold, ICANN will then send it to the registrar and the registrar will be requested to show certain things, depending on the complaint, and those could include the steps that they took to investigate and respond to the abuse report, the time it took for them to respond to the abuse report. ICANN could request any correspondence with the complainant or the registrant, and that's where the third subsection of section 3.18 comes into play. It's 3.18.3, which requires registrars to maintain and document the receipt and response of abuse reports.

ICANN can also ask registrars to identify where the link on their website is to their abuse contact information, and the handling procedure, which is also a requirement, and make sure the registrant has the abuse contact information also located in the WHOIS. Down below we've



listed some examples of the steps that registrars have taken to investigate and respond to abuse reports. That can include contacting the registered nameholder of the affected domains, asking the registered nameholder for evidence regarding the abuse report, providing any hosting information to the complainant about the hosting provider that's hosting the content of the affected domain.

Registrars have performed WHOIS verifications on the domain name registration information, they've allowed transfers on request from the registrant, and they've suspended domains. These are also the reasons that ICANN will close an abuse complaint. They correspond to the sections in 3.18 - the requirements of the registrars that they're required to demonstrate; which are reasonable prompt steps of investigating and responding appropriately, that the law enforcement report was reviewed within the 24-hour requirement, that the abuse contact information they're required to publish is now up and accessible.

Also, that they are maintaining records that are associated with the response to the abuse report, and if they've suspended the domain then that's also a reason to close the complaint.

MAGUY SERAD:

If I may interrupt here, being mindful of the time and we want to have open dialogue, the next few slides talk about additional efforts that Compliance worked on since ICANN 51, and it's also slides showing you some of the closure codes and some of the complaint types that many of you contacted us are interested in. what I'd like to do now is jump to slide 15 please and turn the floor over to Victor Oppenheimer, who's



going to provide a very high-level summary on registry and RA activities. Again, very high-level, and then we'll start with our Q&A. Thank you.

VICTOR OPPENHEIMER:

Thank you Maguy. Victor Oppenheimer for the record. To Maguy's point, I'd like to provide a brief update on efforts since ICANN 51 in LA. There's material here you may have seen before, but basically if you recall, in LA, we talked about the proactive monitoring that was launched back in our August/September timeframe, and these are the results of that effort - 264 TLDs were enquired regarding section 3a, the mandatory provisions that the TLDs are required to have on their RA. Section 3b, the technical analysis that must be conducted to identify and report on security threats. Section 3c, which requires TLDs to publish registration policies on their website. Section 3d requiring that generic TLDs do not limit registrations.

Also, about 20 per cent of the sample were TLDs considered GAC 1 strings, and so we check that those TLDs had the mandatory provisions as well, and then lastly some of the TLDs - of course it doesn't apply to all of them - but some had voluntary PICs, and we also enquired about efforts to comply with those voluntary PICs. Next. This is what I was mentioning before. These are the lessons learned throughout 2014. The very first one, at the top, the code of conduct annual certifications, it's truly the update since ICANN 51. As you know, some TLDs are required to submit the continued compliance with their .brand certification, that ICANN granted them, or some TLDs requested an exemption to the code of conduct.



So also by January 20th of each calendar year they must submit a certification stating that they're still meeting the requirements. Next please.

MAGUY SERAD:

We're going to stop at this slide. Before we open the Q&A session what I'd like to say is a true, honest, sincere thank you to everybody. I really mean it. Having two new Agreements has been an opportunity - I don't want to say issues, guys - opportunities for growth, for learning; not just for contracted parties but for us in Compliance, for the community in general. I know we've driven the contracted parties crazy with our inquiries, and I thank you for your time and commitment to help us address and ease the concern in the community about the perception of non-compliance.

I want to thank IPC law enforcement and any and everyone who has submitted any type of complaint our way. I know we don't always close it to your satisfaction. It is about expectations, and as you've heard us say throughout this week, whether it's myself or Allen, we are working to work to address some of the disconnects in these areas, and Allen in his new role can speak more to that. But we do commit. We all have the same goal, which is the security and stability of the Internet and ICANN. With that, I'm going to turn it to the audience for Q&A. Please identify yourself and your association before you ask your question. Thank you.



JIM PRENDERGAST: Probably the easiest question you'll get. Jim Prendergast, the Galway Strategy Group. Where is the presentation? I just checked in the meeting and it's not posted.

MAGUY SERAD: We will post all the presentations on the outreach website and we'll send it also to the... The reason for the delay in providing the presentation - I'm being very transparent - is we need the data and it takes us a good 15 days to collect it from one system and put it up. It will be posted by the end of the ICANN Meeting on the compliance outreach website, and we'll also send it to the meeting team and it'll be posted in there.

BOB [OGDIN]: Maguy, Bob [Ogdin 00:20:38] here with web.com. I have a general question for you about when a registrar is trying to contact a registered nameholder, and their email box is full, sometimes we'll have Compliance come back to us and say, "Give us proof of your correspondence with the registered nameholder," and we'll show that we sent them the email but their email box is full. Let me start with that question. Is that sufficient, in Compliance's mind, for communication have been made to the registered nameholder?

JENNIFER SCOTT: I guess it depends on the situation. For instance, in a WHOIS inaccuracy complaint an affirmative response is required back from registered nameholders to verify their email address, so in that case a full mailbox would not be a sufficient response.



BOB [OGDEN]: So then if we cannot get a hold of them through telephone verification or otherwise, you would want us to suspend that name and take down the website? That's what you're saying here, correct?

MAGUY SERAD: As Jennifer is saying, it is on a case-by-case. But may I ask you, if they don't pay their bill, how do you get hold of them if their mailbox is full? We need to put forth the effort based on the situation based on the contractual obligation to work together.

BOB [OGDEN]: Okay, typically what would happen, if they have a credit card on file and they're not overdue, then it would just auto-renew. So that would be the answer to your question there. How about a second scenario? When a complainant sends an email to the registered nameholder and it bounces because the complainant's email is blacklisted with the registrant's email provider, you don't expect us to try to troubleshoot third-party blacklisting issues, do you?

JENNIFER SCOTT: No, but there are other ways. For instance, in the WHOIS accuracy specification, registrars can manually verify, rather than getting that affirmative response, as an alternative to suspending the domain. So as long as there's evidence there that your registrar has taken other steps to address, if it's a WHOIS complaint for example, the inaccuracy, then if you provide that we can work with you.



BOB [OGDEN]: Thank you. I think this specific example was where Compliance was saying, “We want proof that you got hold of the registered nameholder,” and our point was, “The email address is fine. The complainant’s email address is being blocked, it’s being blacklisted.” So just beware those scenarios do occur, and you might want to have a use case for situations like that, because as far as we’re concerned, we’re not here to troubleshoot third-party blacklisting issues. Thank you.

MAGUY SERAD: There is a very creative world out there, and I think that’s an opportunity for all of us to collaborate, and if faced with a scenario like this, Bob, we’ll have to dialogue. I don’t have the answer. I’m not technically savvy to tell you how to go about it, but we do have a technical security team we can refer to. We can find a solution, and we will work with you. Just let us know. What we ask for, as we’ve always said, is based on some of the lessons learned and what we see. You guys may have a different approach to it. Just let us know what it is, and we’ll let you know if it’s sufficient.

BOB [OGDEN]: One thing that might be helpful - and we talked about this in the Registrar Stakeholder Meeting yesterday is for Compliance to be putting together use cases like this, to say, “Hey, here are some scenarios that do occur, here’s the burden of proof that we’re looking for, and oh, by the way, in these particular situations we’d consider A, B, C, and D to be fine or sufficient.” So we have new people who are hired into our

compliance group, who might not be as familiar with the metrics that you're looking for in Compliance, and vice versa - you have new employees as well. I think sometimes when the correspondence is going back and forth, it might be because there are some new people on the staffs.

That would just be a recommendation that was again made yesterday, that I think would be beneficial to both parties. Thank you.

MAGUY SERAD: The recommendation was started on Sunday night, when we met with the Ex-Com Team. The initial deck I submitted to the Registrar Stakeholder Group, Paul... I'm sorry, I don't know his role.

MICHELE NEYLON: Michele Neylon, Chair of the Registrars. Paul Goldstone is the Registrar Stakeholder Group Secretary. Maguy and anybody else who was addressing the Registrar Stakeholder Group yesterday would have sent the slide decks to him, and he would have then distributed them; either within the Stakeholder Group or elsewhere. Thanks.

MAGUY SERAD: What I wanted to say here, to everyone in the audience, is based on the concerns we heard Sunday night, but also through other meetings earlier in the week, we went and added those two slides. If you do a comparison to what was provided, and now what we updated, we added slight 8 and slide 9 to provide clarity of what is ICANN requesting, may request? So for example those bullets under what ICANN could request

is a guideline that guides our staff, and it's a guideline also to let the community know how and what we work with, and what are some of the examples that registrars respond to, and what are some examples that Compliance may close a complaint - without putting the specifics out there.

So this an attempt we try to put with upcoming policy updates that are happening, but also in any presentation we add the guidelines. We call on guidelines - not good practices or best practices - because we do recognize the fact that everybody has a different operation. We don't want to impose a way. We provide guideline to what we're looking for, but please let us know if there's another guideline we need to add, and we'll be happy to review it and add it.

ALLEN GROGAN:

This is Allen Grogan. There are a lot of places in the Agreement where we use terms like "reasonable" and "appropriate action" and we recognize that what is reasonable and appropriate will depend on the circumstances. If you do, Bob or anyone else, have specific use cases or examples of questions that you want to kick around with us, it would be very helpful for us if you would submit some of those for us so we can talk about those in concrete terms, because one of the difficulties we've encountered sometimes is we'll get very broad complaints that Compliance is being unreasonable and is interpreting the contract differently than the contracted parties.

An abstract proposition like that is very hard to respond to. Some of the examples that you gave, we could sit and have a dialogue about what might be reasonable and appropriate under those circumstances.



BOB [OGDEN]: Thanks Allen. I think that one thing that might also be helpful is that sometimes we get a response from Compliance that says, “Your response was incomplete.” We would like that to be followed with, “Because...” - “Your response was incomplete because...” and then I would like the reason the complaint was incomplete to be included in the response. I’m literally just going through some tickets right now, and we’ll replying to your team saying, “Why was our initial response incomplete and why is it now under second notice?”

So again, we want to be collaborative, but there’s this back and forth occurring, as I mentioned yesterday to the Board, and I think it creates some tension between the organizations that I don’t think need to be there. Thank you.

JONATHON DENISON: Hi, this is Jonathon Denison from Contractual Compliance. There are a couple of questions there in the queue. Alan Woods from Rightside has a question: “Could you confirm, regarding complaints, does ICANN Compliance undergo any merits review of complaints prior to issuing compliance notices to the relevant party?”

JENNIFER SCOTT: If you could go to slide 10 please? Hi Alan, thanks for your question. We do have a slide here in the deck to address this question. ICANN always validates reporter’s complaints before sending them onto registrars. We sometimes ask the reporter to provide certain information, depending on what type of complaint it is, before sending it onto the registrar. If

you look at our metrics slides you'll see that invalid complaints are also included there, and there is a large portion of complaints that are received by ICANN that are never forwarded to the registrar. Slide 10 here details quality efforts that ICANN also undertakes after complaints have been sent to registrars.

These efforts ensure consistency across staff, as well as to make sure that registrars are continuing to do what they need to do after a complaint has been closed, or a non-compliance issue has been remediated.

YASMIN OMER: Yasmin Omer from ARI Registry Services. I just wanted to clarify your response to Alan's question, because you mentioned that registrar complaints are validated. Are registry complaints also validated?

JENNIFER SCOTT: Yes, sorry about that. All complaints are looked at by staff before going to any contracted party.

MAXIM [MOZEL]: Maxim [Mozel], [unclear] for the record. Was it this measure of checking the complainant's... When did you start to apply it? Because we had a case where in the text of the case it was visible that the case itself wasn't read properly by the agent who was in charge of interaction with us, for example. So Compliance demanded something that was not in-line with the text of the complainant itself, and it wasn't checked, for example.

JENNIFER SCOTT: Without looking at the specific case you're referring to I'm not sure how to answer that, other than if you see something that's out of line with the original report that's appended to the notice sent to your contracted party, just write back and let us know what it is, and why it might be inconsistent. Sometimes ICANN does receive information that's anonymized from reporters, depending on the type of complaint, that we don't always forward to the contracted party.

MAXIM [MOZEL]: If the subject was questionable, does it stop the timer of those one to three notices?

JENNIFER SCOTT: Yes. If there's more time needed to respond, just let us know that, give us a basis for an extension request, and we'll work with you to stop that clock.

STEVE METALITZ: Thank you. Steve Metalitz, the Coalition for Online Accountability. Firstly, I want to thank Maguy and Helen and the rest of the team for your presentation at the IPC yesterday and the discussion we had there. I think it was very useful, and we appreciate your commitment to try to bring some more clarity to this 3a team 1 area and the equivalent, and I would just say to the registrars here that if you find the process opaque from the complainant standpoint, it's far more opaque if we don't see



half of what you're seeing. So hopefully we'll be able to get some more transparency there.

I did want to ask a question about slide 8, where you listed the examples of what registrars had done in response to a complaint? Yes, thank you. So the bottom list there. I'm trying to understand what the significance of this list is. Is this purely descriptive - you're saying these are things that were done? Or are you suggesting that these are things that, depending on the case, would constitute reasonable investigation and appropriate response in terms of the contract?

JENNIFER SCOTT:

This here is just a list of examples of things that we've seen as steps taken. In our notices ICANN doesn't tell registrars and registries what to do to resolve an issue or a non-compliance, so these are examples. Like Maguy said before, get creative, show us what your business model handles in response to these types of reports.

STEVE METALITZ:

So these are things that the registrars have told you? This is not a statement that in any particular case this is sufficient? I don't want to put words in your mouth, but that's how I understand what you've just said?

JENNIFER SCOTT:

It's a case-by-case determination, so it really depends on what the abuse report is about, a potential harm from the alleged abuse... You're



probably going to handle a child pornography report differently than a spam report.

STEVE METALITZ:

Understood. The next to last one I wasn't clear on that. If you could shed a little more light on that? You forward a complaint to the registrar, the registrar tells you, "We transfer the domain on the request of the registrant." How does that... I guess Michele is going to give me the answer to that question.

MICHELE NEYLON:

Thanks Steve. I can understand why that's confusing you, because believe me, if you saw some of the really odd abuse complaints we get, you'd be confused too. We have had abuse complaints that have actually ended up with Compliance, because instead of logging into the control panel we provide to update their contact details or to open a support ticket, they sent an abuse complaint to Compliance. I think that's probably in there because somebody was trying to transfer a domain name, and instead of getting the EPP code and unlocking the domain with the registrar, they went straight to Compliance to complain, or something like that. I think maybe putting it there on that slide might be causing confusion.

It's probably an example of somebody who's using ICANN as a customer support service instead of anything else. This is part of the frustration we're having in general; with just people sending things to really odd places. I'll give you another example. We published on our website about three weeks ago an email address so that any new domain



registries could contact us using that email address. I had to take the damn thing down because in the space of 48 hours we received 15 queries that had nothing to do with domain registries - and we're a tiny registrar, in the grand scheme of things.

SPEAKER:

I'll give you another example, Steve. Sometimes we get a complaint about domain name hijacking, and our ability to address that directly is limited. But sometimes we'll reach out to the registrar, the registrar will contact the registrar will contact the registrar to which the name was transferred after the hijacking, and they'll work out a deal to transfer it back. So you could have a circumstance like that where there's a transfer back in order to undo a hijacking.

STEVE METALITZ:

Thank you. That clarifies this. This list, it's interesting, but what we're hoping to see I hope is what the gentleman across the way was asking for, and that's some more specific concrete use cases. We don't bring those types of complaints, obviously, and so we want to have a clear understanding of what we need to show in order to get action from Compliance, and then what will constitute in those cases sufficient reasonable response. We will pursue that with you, as you've invited us to do, and again this morning, as you've invited. So hopefully we'll get more clarity on that. Thank you.

BOB [OGDEN]:

Bob [Ogden] again, for the record. Maguy had mentioned yesterday that they were also thinking about implementing more use codes so that



maybe when you respond to the complainant you would say, “This issue was closed, see use code 4,” and that would mean the name was suspended or something like that.

MAGUY SERAD:

An example might be, if you could go to slide 12, when ICANN received complaints it goes through the process. As we showed on slide 8, every complaint that goes into ICANN goes through some kind of validation. Some validations are automated, regardless. After that check is done we do an eye check to make sure there are other things that cannot be automated, and it goes through the process. From the beginning until closure of a complaint, it’s tracked, and if and when it’s closed, a closure reason is assigned to it.

When we started three and a half years ago we had 20 closure codes and now we’re up in the hundreds. What we are working towards is by the next ICANN Meeting to be able to bring forward some of the reporting and the closure reasons on abuse, and bring more clarity, as we’ve heard from the meeting, to be prepared to have some of those cases discussed and the reasons shared with everybody and the percentage of those.

MAXIM [MOZEL]:

Could you please go to slide 16? Section 3b, conducting security threats, technical analysis at the time of inquiry. Can you please share your findings? Were these data bits analyzed somehow or was it just a collection of data about the Spec 11 things related to security? What did you do with these bits of data from different registries? Thanks.



VICTOR OPPENHEIMER: I stated before, for section 3b we required TLDs, as per their obligations on the contract, in terms of “are you conducting security, the technical analysis? Have you started?” and a few of them had not, but through the informal resolution process committed to remediate the situation and start the technical analysis. Also we required reports. As you know, that section also allows ICANN to request their reports on the security threats identified and any actions taken on them. So essentially that’s the data collection that was made under that effort.

MAXIM [MOZEL]: The question was what did you do with these bits of data? Were you analyzing it? Because without the analysis of the collected data the Compliance has shaken our text and the contracts and other documents that are obligatory for us, and without the checking of the subject we don’t understand what was it done for.

VICTOR OPPENHEIMER: Sure. I understand your question now. Sorry. Of all the reports received, ICANN reviewed whether any security threat was identified as not an action taken, but all of the reports that were submitted to us either had no security threat identified, or if a security threat was identified an action was reported, and so therefore ICANN considered that no further action was needed.



MAGUY SERAD:

if I may add, Maxim, this was addressed in a similar fashion when we are asking for facts to support reviewing an obligation. To Victor's point, reports were submitted, and specification 11, section 3b, provides a high-level guidance on what is expected in the report without detailing it. As you can imagine, based on the operations and readiness of the different gTLD operators, the level of information provided can be at a minimum what's in 3b, and some have even more. The team would review it, and if there are additional questions we would have followed up. But at this point it's more of a validation - is it there?

Is it at a minimum being addressed? And as Victor mentioned, initial reviews were not alarming, so there was no need for a follow-up.

ALLEN GROGAN:

Most of you probably know this, but there is an effort underway to develop a framework, to flesh out what appropriate actions might be under that section - not to make those binding contractual commitments, but to establish a safe harbor or a recommendation of practices for what periodic scanning for security threats might be appropriate. I think there are a lot of registries that are already doing that. There are some of the smaller registries that either may not be, or may be confused about what it is that would be expected of them, and the framework in part is to try to at least provide some guidance on what people could do, without dictating what they have to do.



YASMIN OMER: Thanks. Clearly Compliance are proactively monitoring compliance with specification 11. What other obligations in the RA are you proactively monitoring?

VICTOR OPPENHEIMER: At a very high-level, there is a distinct difference between the registrar and the registry world, in the sense that the registrar world is essentially driven by external complaints -because obviously the registrars are face-to-face with the registrants' transactional work. That's obviously not the case with the registries. ICANN has built, for the new program, monitoring tools. Our compliance receives exception reports, those exception reports are evaluated before sending notices to the registries. So in a sense, that is also proactive monitoring.

The access to the weekly, access to THIN data, the SLA monitoring, that's not all driven by external reports but rather by our own systems, and in that sense it's also proactive. So a lot of the technical, if you will, requirements on the RA are proactively monitored as well.

ALLEN GROGAN: Depending on how you define proactive, we also look at reports in the media of abuse. We read columns in the newspapers and so forth, and if we notice that there's a pattern of complaints about registry activities, we may proactively reach out to enquire about those - we don't necessarily wait for a formal complaint to come into Compliance before we initiate investigations.



YASMIN OMER: Thanks. So it's not just limited to spec 11? Is that what you're saying?

ALLEN GROGAN: Correct, yes, that's generally.

YASMIN OMER: Thanks.

JONATHON DENISON: Okay, we have another question from Rob Golding: "What options exist for registrants, registrars and registries to challenge bogus claims about ICANN Compliance, which are ICANN staff are unilaterally deciding to mission creep and to regulating content, which is outside of ICANN remit and context?"

ALLEN GROGAN: I don't know that there's a formal structured appeals process, but you can reach out to us and if you get a notice and you believe that the complaint is outside the scope of what is required, or outside the scope of ICANN's remit, respond that way. If you ask for an extension of time and you want to have a dialogue with ICANN Compliance or ICANN Legal to discuss it, we'd consider granting an extension to your time to respond while we do that, as long as that's not used abusively. So if you want a week to schedule a phone call to talk about that, we'd entertain doing that. If you want 18 months to schedule a phone call, we probably wouldn't.



MAGUY SERAD: I know we have a room full in the back. Any questions? Okay, we have somebody.

REG LEVY: This is Reg Levy from Minds and Machines. Earlier, it was discussed that ICANN reviews all of the complaint notices that come in, but there is a difference between reviewing and validating, and when you first said ICANN validates all of them, and then at the very end you actually said, “We look at them all,” which is completely different. I know that I have received notices from Compliance asking for information about why I did X, when in fact X had not happened and that was just the allegation.

We’ve spoken earlier about the fact that Compliance feels adversarial and so I’m just wondering if there’s a different way of framing that. So instead of, “When did you start beating your wife?” maybe start asking me if I’m married in the first place, because a lot of times the requests that I’ve received are so off-base that I don’t know how to... Not a lot of times, but occasionally I’ll get requests from Compliance that are so off-base that I don’t know how to respond. I’m like, “I can’t prove to you that I didn’t do this, because it’s not... I can’t.”

MAGUY SERAD: Thank you for the question. I’d like to take the first part, and Victor, if you don’t mind addressing the second part? You are correct. I did say validate, and I did say we look at it, because it is on a case-by-case and on obligations. Most of the validations relate to, for example, for WHOIS inaccuracy, by running the validation, does the domain name still exist? Is it suspended? That’s what I meant. I did specifically say, “Look at it,”

because again, when we say “look at it” it means we do an eye check that we have the information correct. Because some stuff you cannot automate, but it’s not necessary that we can validate at that level. With that I’d like to turn it to Victor to address some of the monitoring stuff.

REG LEVY:

Actually, this was not in relation to a monitoring system - this was actually in relation to a complaint; it was the same issue involved, where there was a complaint and then the Compliance request was, “Why didn’t you do X?” and the response was, “We didn’t not do X because we didn’t, and so where is this coming from?” instead of potentially it could have been framed as, “There was an allegation that X happened, what’s your evidence?”

VICTOR OPPENHEIMER:

Yes. Perhaps, Reg, it would help us if we can send us the specific case, because in the abstract I really cannot help you, but obviously we agree with the general principles that you're stating.

JENNIFER SCOTT:

Hi Reg. I think I know which specific example you're talking about, and we can talk about that offline more. Like Victor said, we’ve taken that comment back from your response to the ticket and we’re discussing that, so thank you.

ALLEN GROGAN:

I have no idea what the specific matter is that you’re referring to, but I agree with you, as a matter of principle, that yes, there is a difference



between saying, “Why did you do X” and, “It’s alleged that you did X, is that true? If so, why?”

REG LEVY: Yes, and that’s much more where I’m going. The specific case, which all of you can just wonder about, is resolved. It’s totally off my radar at this point, but the tone is helpful, and it encourages collaboration when it’s, “We’ve received this report, what’s your side?” as opposed to just...

MAGUY SERAD: That’s why we have increased [verses 00:53:56] notices, and I have received feedback about the tone in the registry space, so we are revisiting the communication templates, especially in the informal resolution phase, the tone is really about informal resolution, and we’ll work on addressing that. Thank you for bringing it to our attention.

REG LEVY: I will say that if what I’m complaining about is the tone then we’re probably in a good place, so thank you guys.

JORDAN BUCHANAN: Jordan Buchanan with Google. I think that at previous Compliance discussions I’ve asked for a consideration of a new metric to track cases raised in error by ICANN as a metric, with a goal of eventually managing that towards zero. I think in my last discussion when I raised this, Allen indicated that might be an interesting metric, or something like it. So I was wondering if any progress has been made into some sort of

consideration of some sort of erroneous complaints due to either a system failure, or a misinterpretation by ICANN?

ALLEN GROGAN: The short answer, I think, if nobody corrects me, is no, we don't have that in place. I do remember the discussion and I agree it's an interesting idea. I will make a note of that.

JORDAN BUCHANAN: Okay. Then my follow up question is since I think you guys do have a category for closing, which is "closed - no action by..." Basically, it was closed and the registry and registrar didn't have to do anything to resolve it, right?

VICTOR OPPENHEIMER: Yes, "registry demonstrated compliance". That's essentially the closure code that tells us that an allegation was sent your way and the TLD demonstrated with evidence that there was no basis on the complaint.

JORDAN BUCHANAN: Yes, so many of those could be raised not through an ICANN by ICANN, but because it was not observable one way or another by you as to whether there was compliance at the time you...

VICTOR OPPENHEIMER: Correct.

JORDAN BUCHANAN: Yes, so it's not quite the same thing. But how does that trend over time? I'd also expect you'd want that to trend down generally, over time.

MAGUY SERAD: Are you referring to the closure code trending?

JORDAN BUCHANAN: Yes, that's right. I'm wondering, over the last 6-12 months, how that particular closure code has been trending?

MAGUY SERAD: We've not looked at the trend. I oversee the metrics. If you don't mind, Jordan, can you send me an email about the specific metric you referred to earlier in your first question? What is the metric about? Define it, and tell me what is the expectation. If we have a follow up questions, I'll follow up with you, but I'd also like to put it to the rest of the contracted parties, because I don't want to just take Jordan's perspective - I want to make sure when we are putting a metric together it fits the stakeholder group that it's representing. So define it, send me what would be the measure of it, and what the expectation would be please, in an email, and we'll get back to you on that one.

SPEAKER: A couple of questions. First one, going back to Rob Golding's original question, is there a formal appeals process beyond sending it to the Ombudsman?



ALLEN GROGAN: I was hesitating for a moment because I wanted to make sure to give you an accurate answer. Let me think about that in the context of ICANN accountability mechanisms and get back to you with an answer. I don't want to answer that on the fly and get that wrong.

JONATHON DENISON: A question from Chris Pelling: "I need clarification please on the 2013 RAA Section 5.5.2.4, which says if a registrar A has a UDRP filing set against them, they're named, with regards to a bad faith registration against another registrar B, where the actual name registered is protected under a European Trademark, can 5.5.2.4 be invoked by ICANN at the request of registrar B? 5.5.2.4 also states through its affiliate in a pattern and practice of trafficking, in or use of domain names identical, or confusingly similar to a trademark. If multiple examples, at what point does ICANN take action?"

MAGUY SERAD: Thank you for the question. I have had three coffees this morning, but what we're going to do is we'll take it from the Adobe room, review it, and if you can please send me your email... Actually, here's what we'll do - email it to us, and we will respond to it. Thank you. We also have, for the registrars, the closed session tomorrow to talk about interpretations and discussions of scenarios. So hopefully by tomorrow we can have that response.



STEVE METALITZ:

Steve Metalitz from the IPC. I think this follows onto Jordan's comment that if you're going to have a closure code that said, "Because ICANN screwed up" you'd need to have somebody else making that determination I think, and it raises this issue of appeal. Just from the complainant's standpoint, when you file a very extensive evidence case about abuse that's taking place, and a domain name that's [responsible 01:00:27] by a particular registrar, and the response from ICANN is, "ICANN has reviewed and closed your complaint because the registrar demonstrated that it took reasonable and prompt steps to investigate and respond appropriately to the report of abuse.

"ICANN considers this matter now closed. Please do not reply to this email. Replies to closed complaints are not monitored by ICANN staff." Well, I don't think it's just a question of tone. I think basically you're saying, "Go take a flying leap," and there's no appeal. So I'd encourage you to look at both how this is phrased - because it tells you nothing, it just recites the language of the contract, and it says, "They were in compliance, so go away." We don't think they were in compliance, so we need more information in other words to understand why the complaint was dismissed, and in default...

Either that can be through a process that involves the ICANN Compliance Team, or it involves getting a fresh pair of eyes to look at it. So one way or the other, I hope we can improve on that.

MAGUY SERAD:

If I may address the first part? I know someone from the audience will address the second part. Regarding closure complaints, the tool, we cannot receive it when it's closed. However, I think everybody knows -



and I'll take it as an action item, I'm not sure what the level of effort is to update the templates across all - where we can say, "If you still have questions, send an email to compliance@icann.org." I can address only that part. Michele, you wanted to address the second part?

MICHELE NEYLON:

Sure. Michele, Chair of the Registrars, who I think Mr. Metalitz has had issues with, about some of these apparent Compliance complaints. The issue around the response you're getting back from ICANN Compliance, I think Maguy and her Team can address that. That's more of a software issue than anything else. From the registrars' perspective, we have a contract to which we're expected to comply. We go backwards and forwards with ICANN Compliance. Maybe you feel that you're not getting as much of an answer as you might like, but it's a matter between us and them. We do not have a contract with you. I don't really understand what it is that you're actually looking for.

STEVE METALITZ:

"Michelle", if you don't understand what I'm looking for, and if you don't know how to pronounce my name after ten years - I'm a little concerned about that, too - if you think this is just between you and ICANN, I don't think you understand the multistakeholder model, and I question whether you understand why we're participating in this organization.

MICHELE NEYLON:

We're talking here about contractual compliance, which has got nothing to do with multistakeholder models or anything else. This is a matter of a contract between two parties. Now, if you feel that there's something



that should be in a contract, or there's something that should be in a policy, that's something you can raise within the multistakeholder model. However, the contract is the contract, as written. There are issues around interpretation. There are issues with interpretation from people who are sending in reports who are expecting registrars to take action for things that do not fall within the remit of the contract. There may be other avenues to raise those issues, but potentially not through that avenue.

STEVE METALITZ:

Michele, you made a big assumption there that the complaint was not within the scope of the contract. You don't know whether it was or not. I'm saying that when we put in a complaint we'd like to know why it was rejected and not just say that the registrar was in compliance.

MAGUY SERAD:

I love ICANN. I love the passion we all have. Thank you very much. I understand the frustration. We're on the receiving end from everybody on that frustration. I think we made it clear at the beginning of this week, and ever since abuse reporting was added in the contract, that there is an opportunity for additional clarification, there is an opportunity to have further dialogues, and I don't want to say ICANN screwed up. ICANN is all of us, so let's make it proactive. Katie from the IPC sent me some of those emails. I'm very familiar... When I saw it, I do not remember the details.

Before we leave this meeting we're going to regroup and let you know. I, as leader of the Compliance Department - and I know Allen, as leader



of our department too - take it to heart, and listen to everybody. My role, as I said, by the next ICANN Meeting, if not before, will bring more visibility to abuse reporting, to closure codes. Jordan's going to send me some additional stuff, and if it's not time, we'll have to look at the assessment; how long it takes and by when can we execute that, because we do have a list of things we're working towards - we can't just put that on the top. But thank you very much for your feedback. Really. I hear the frustration. We're frustrated too. So let's get this addressed and we'll go from there.

SPEAKER:

Just briefly, partly in response to the question that was posted in the Adobe Chat Room, and partly in response to this discussion, while there is not a formal appeals process within the Compliance Department, as I said, you can reach out to us and we'll engage with - hopefully constructively. Beyond that, there are ICANN accountability mechanisms, and again, this is one of those questions that's difficult to answer in the abstract, but the ICANN accountability mechanisms, high-level, are reconsideration, independent review, Ombudsman.

So depending on what it is your complaint is, it's conceivable it might fit within one of those. You can consider that and look at our webpage on accountability mechanisms to determine that.

JENNIFER STANIFORD:

It's okay. I'll send my question and I'll submit it. It was more technical.



MAXIM: Is it possible to have those closure codes? It will let us understand your logic more deeply, so we could address questions to you more accurately. Is that possible?

MAGUY SERAD: That's what I said earlier, Maxim. We're going to pull these closure codes and report on them, like we've done before. Yes.

JORDAN BUCHANAN: Jordan Buchanan with Google again - so two points on closure codes and metrics more generally. One is on closure codes. I think Steve made a great point that it's helpful to... I think you are identifying closure codes at the moment, which is fine, but I think some ability just to create some transparency into that would be useful, so maybe at the time the case is closed to make it so the registry or the registrar sees the closure code as well, so if we disagree we could engage you on that. That might be helpful. Second, Maguy, you said earlier that you don't track the trends on closure codes, it sounds like.

What's other metrics do you track trends on over time? And how do you determine whether to add or remove things from that mix?

MAGUY SERAD: The data is available. If I wanted to look at the trends, it's available. I'm saying I've not personally spent time looking at it. Again, there are so many high priority issues we've been working with, and if trending on those abuse complaints or closure codes are important, let us know. On our performance measurement and reporting page, we do publish a lot



of information, and that's an ongoing progress. If there is data that is valid and we hear requests from stakeholder groups - not individuals, please; we cannot just cater to individual needs - but if there's a request that's coming, bring it with a voice from a stakeholder group, for the sake of transparency.

We will take that request, get with you to understand it, and then evaluate the level of effort and get back to you on when and how it will be executed.

MICHELE NEYLON:

Just on this entire thing around dealing with improvements in clarifications and all that kind of thing, from the Registrar Stakeholder Group Ex-Com, as well as the Registry Stakeholder Group Ex-Com, they have a standing meeting with ICANN's GDD staff on the Sunday night of the ICANN Meeting. It doesn't appear on the public schedules, but we do have it, and of course we do have a super secret meeting and discuss how we're going to overthrow the empire! But seriously, one of the topics that has come up in those meetings, and also in other meetings we've had with Maguy, Allen and others on the team, is around some of these issues that are pain points, both for registrars and for registries.

If the reporters are having issues, so are the registrars and registries. It's a matter of just seeing exactly what the issues are, of being as specific as we can be, and then working to improve the entire experience for everybody. To Steve's point around the closures, sometimes on the registrar side for example you just get back a notice saying, "Ticket closed." Of course, there's no explanation as to why the ticket's been closed, apart from it's closed. In my case, I'm usually just happy the



damn thing is closed, and in other cases they may have spent a huge amount of time, money, energy and effort resolving it, and are wondering what the magic sauce that they used to do so.

This is something that is being addressed, and hopefully will be addressed further in the coming months. Thanks.

MAGUY SERAD: We have five minutes left on the Agenda.

JENNIFER STANIFORD: If there are five minutes left, I'll ask my question. This is Jennifer Staniford. Related to slide number 16, the examples of the steps the registrars took to investigate in response of these reports, specifically referring to bullet point number two, asking for and obtaining evidence or licenses. Can you elaborate on that?

JENNIFER SCOTT: This is a list of examples that we've seen of steps taken by registrars in response to abuse reports. Licenses there refers to usually pharmacy licenses. We've had some complaints in the abuse space regarding online pharmacies, and once a registrar has contacted a registrant, the registrant might reply and say, "X Y and Z," and then a registrar might go back to the registrant and say, "Can you supply supporting documentation for X Y and Z?" When that relates to a pharmacy complaint, sometimes that's a pharmacy license. It might be some other type of license as well. That was just one example of documentation that we've seen though.



SPEAKER: Under the PICs in spec 11, even though we don't have a lot of experience with those yet, for some of the highly regulated strings, one of the requirements is that the registrar obtain a representation from the registrant that it has any necessary credentials, so it's possible that, for example, if you had a .doctor registrant who represented that he or she had the necessary credentials for registration of the domain name, and somebody made a complaint that they didn't, that the registrar might reach out to the registrant, ask them if they actually have the credentials that they represented, [unclear 01:14:06] that they did have.

Then they'd submit that as proof that in fact they've not only got that representation from the registrant, but that the registrant really is a doctor.

MAGUY SERAD: I have two more minutes left.

JIM PREDERGAST: Allen, just following up on that, what it is right now, the requirement on the registrant is to tick a box, saying that you have this. So, "Give me the credentials that prove that you're a doctor." What if the registrant doesn't provide those? Are you supposed to suspend the name because they didn't provide that? It seems like you're putting the registrar into a verification area that they're not technically or professionally able to deal with.

ALLEN GROGAN: Again, I think we're going to have to deal with those on a case-by-case basis as complaints come in, and determine what appropriate action is by the registrar. It's hard to answer that in the abstract.

MICHELE NEYLON: To Jim's point, I think I kind of understand your question, but I would have thought that some of that would depend on the registry's contract, surely? Some of the registries that have certain restrictions are asking the registrar to collect certain information, whereas other ones, you're not actually asked to prove anything until they do some kind of check on the registrants further down the line. I'm just trying to understand what you're doing, but of course the other thing as well is - and I love to raise this one - if you were to register doctor.au you wouldn't have to provide anything. I find it rather amusing that just because it's got magical pixie dust on the right of the dot, that you're respected to provide extra documentation, but that's just me.

JIM PRENDERGAST: You're right. It depends on the RAA and the registry/registrar registration policies, as to what the registrar actually has to collect, but if it is a simple "tick the box, just say you have the credentials" then what's the obligation on the registrar to actually get that, if all you have to do is tick the box?

MICHELE NEYLON: Isn't this in the contract? Maguy's upset because we're eating into our coffee break. I think it depends on the contract, to be perfectly honest with you. I've looked at the contracts we've got from several registries



that have restrictions, and some of them have an entire validation/verification type thing. Others it's a self-declaration or affirmation, or whatever the terminology is - because I haven't had the coffee yet - so I think it depends on the contract. Asking them to answer that is probably a little bit unfair on them.

MAGUY SERAD:

If you guys are familiar with the soap opera concept, in the US, join us on Thursday for a continuation on *Days of our Lives of the Contracted Parties*. But thank you very much for everyone's participation. I just want to do one more comment. I heard from the contracted parties on the closure code, because it's involved system and upgrades and all the stuff to go, and add why we closed a complaint, I'm addressing the contracted parties only. A complaint is sent your way, specifically identifying where there's an alleged non-compliance to a provision, or specifically asking for information.

So when ICANN sends a closure notice to the contracted party and says, "This complaint is closed, thank you," again, future recommendation for continuous improvement. We can list why, but for the time being, until it's updated, it's in reference to information being provided and that you have met the obligation of that.

MICHELE NEYLON:

Sorry Maguy, I really have to take issue with that, because we've had issues where we've submitted information, we've had zero recognition of the fact that we've responded. We've had nothing until I poked one of your staff directly, and then magically I get a notification to say the



ticket's been closed. So nothing had changed about the data submitted, nothing had moved forward, and as has been discussed, ad nauseam, we don't have visibility on the status of the tickets. I think the thing is that I understand what you're saying, but at present you've got certain issues, which - let's blame your IT department rather than you personally - but we're not getting responses to tickets.

So then we end up in a situation where the ticket's open, you've submitted things, and you're going, "Okay, why are they still sitting on this?" Then eventually you get, "Ticket closed," and it's like, "Why? What?"

MAGUY SERAD:

If I may? This is in case you didn't get a closure. For those who are getting closure notices, and it say, "Ticket closed," it's in reference to that. We are aware we have opportunities for system opportunities and we're working on that. With this, I'm already five minutes over. Thank you very much for your participation today. This has been productive and have a great day and rest of the ICANN Meeting.

[END OF TRANSCRIPTION]

