

INDEPENDENT COMPLIANCE WORKING PARTY

September 6, 2018

Jamie Hedlund, SVP, Contractual Compliance & Consumer Safeguards
Maguy Serad, VP Contractual Compliance Services
David Conrad, Chief Technology Officer
Bryan Schilling, Consumer Safeguards Director
Internet Corporation for Assigned Names and Numbers

VIA E-MAIL jamie.hedlund@icann.org

Dear Jamie, Maguy, David and Bryan:

The Independent Compliance Working Party is comprised of global businesses that depend on the continuing security, stability and resiliency of the Internet, and thus have significant interests in domain name industry issues and outcomes. Our members are long-standing participants in ICANN- and industry-related discussions and policymaking.

This letter is a follow-up to our previous correspondence and meetings and is meant to memorialize our priorities and agreed-to actions and next steps. You'll recall from our initial approach ICWP's requests that ICANN Compliance: use all of the data and tools currently at its disposal to address rampant levels of abuse among a few contracted parties; provide more transparency on its activities; and detail what additional authority and resources it needs to adequately address DNS abuse. We look forward to receiving more information in response to our initial requests¹, and we appreciate that our recent meeting focused on concrete steps to sharpen the Compliance department's efforts to address systematic DNS abuse.

In-depth Data

ICWP was encouraged to hear that ICANN is making use of data to inform compliance actions, and we look forward to receiving details, both to better understand your activities and to provide assistance where appropriate. As discussed, there is a critical need for Compliance to access, and act on, detailed data on the misdeeds of certain parties and our group would like specifics regarding what you need, barriers to accessing such data, and what our group can do to support your receiving such data on a regular basis. As previously requested, please let us know what data you currently have access to (including via the Office of the CTO and other sources) and specifically how it may be deficient for your purposes. We note that there is substantial publicly available data regarding DNS harm, including ICANN's Domain Abuse Activity Reporting System, and we encourage you to use it proactively.

During our meeting in Panama City, you also expressed interest in the community's help in gathering evidence of actionable harm, with a particular focus on phishing, botnets, malware, spam, and other harms. You are seeking as complete a set of evidence as possible when a harm is identified, as well as evidence of non-action on the part of the party overseeing the relevant domain. ICWP looks forward to fulfilling this request, and to Compliance's feedback on the formatting and completeness of submissions.

Action items

- We request that ICANN identify the data sources it uses, what data it lacks, and what data is needed in order to take both proactive and reactive action -- and provide this information to ICWP and the community.

¹ <https://www.icann.org/en/system/files/correspondence/vayra-to-hedlund-27feb18-en.pdf>

- ICWP will organize and submit evidence of harm, as appropriate.
- ICANN is to provide feedback to ICWP regarding the constitution and formatting of data packages, and is to advise the broader community regarding the same.

Transparency

ICANN reported that Compliance will be examining potential actions to make elements of its function more transparent. Such a step would be helpful for parties interested in understanding statuses of complaints within Compliance’s process, especially those parties who submit complaints to Compliance, as well as organizations like ours interested in supporting effective Compliance actions.

As discussed, the more data available to the community, the better the community’s understanding of the compliance landscape. A lack of such data is a barrier to efforts to protect our customers against abuse. This is especially true where a complainant is provided an automated, non-specific, or non-informative response regarding the resolution of complaints submitted to Compliance. We note that a complainant is told only that a ticket was opened and then closed, and doesn’t receive information that would enable the complainant to understand what action (if any) was taken, and in the event the harm persists, whether it can appeal Compliance’s decision or the (non-)action of a contracted party, or escalate this appropriately. As such, we request that Compliance be more specific when responding to complaints: responses should include specific actions taken by Compliance and related documentation, including the identity of parties you’ve acted against, and detailed “causes” when rejecting complaints.

In our discussion, Compliance referred to the potential building of an online system for tracking the status of ongoing Compliance actions. This would be a welcome additional tool for the community’s use.

We look forward to this procedural update and other systemic changes within Compliance that bring more transparency to your function.

Action items

- Compliance to add specificity to communications regarding filed complaints.
- Compliance to develop an online tracking/status tool/website for ongoing Compliance actions.

Compliance and GDPR

ICANN reported that Compliance’s role with regard to the General Data Protection Regulation (GDPR) continues to evolve, and that the department is proactively reviewing third-party complaints to verify compliance with the recently issued [Temporary Specification](#).

The implementation of GDPR compliance and associated changes to WHOIS introduce significant changes to Compliance’s responsibilities. As discussed, an updated procedure for reporting inaccurate WHOIS data is urgently needed. Also, in the interest of transparency and in the spirit of using data to make informed policy decisions, we request that ICANN measure and report statistics that can inform the community on the impact of the temporary spec for WHOIS. (As a specific example, Compliance could measure registrar responsiveness to requests for WHOIS data for legitimate purposes. Compliance may consider establishing a minimum set of criteria for making and accepting such requests, including whether or not registrars make available clear information about how to make a request.)

We therefore request that Compliance:

- (i) establish proper disclosure guidelines for non-public WHOIS records including an obligation to identify the appropriate contact, process and criteria for a data request; and
- (ii) implement an enforcement process that will ensure requesting parties are being satisfied.

We believe an effective enforcement process would include:

- A comprehensive review of the complaint;
- Confirmation of lack of availability of the non-public data via Port 43 or the registrar's website (without unique authorization or whitelisting);
- Confirmation that the request adheres to the language requiring access in the Temp Spec;
- A reasonable timeline for action and resolution by ICANN Compliance, particularly for alleged abusive domain names; and
- Tracking via publicly available metrics of registrars' provision of non-public data.

We look forward to seeing these and other GDPR- and WHOIS-related procedures and accountability measures and further sharing of post-GDPR experiences with you and your team.

Action items

- We request that ICANN provide the community with a description of Compliance's specific GDPR-WHOIS related procedures and accountability measures and plans, including those addressing WHOIS inaccuracy. In particular, please document what (enforcement) actions ICANN intends to take to ensure that registrars or registries maintain reasonable access to WHOIS.
- We ask Compliance to define what information should be included in reveal requests, and what action (at a minimum) a registrar must take to fulfill such a request.
- We request the ICANN provide assurance that the framework elements for a Unified Access Model will ensure that accredited parties are not only whitelisted, but not subjected to a rate limiting that is insufficient to obtain registration data records at rates necessary to investigate abuse.

Interpretation of Agreements

The ICWP welcomes your invitation to assist with contractual interpretations that enable Compliance to effectively address known bad actors. We learned in our meeting that ICANN is interested in leveraging its agreements with contracted parties in new and more effective ways.

Action item

- We request that ICANN advise ICWP regarding elements of contracts that Compliance believes limits ICANN's ability to effectively pursue known or suspected bad actors.
- ICWP will review the above and provide feedback to ICANN.

Consumer Safeguards Participation

ICANN reported that it plans further community discussions regarding the Consumer Safeguards function, perhaps including sessions at ICANN63 in Barcelona. The ICWP would welcome participation in such discussions. If, as your letter suggests, the function's directive is to develop new safeguards targeted at DNS abuse mitigation or enhancements to registry and registrar agreements, we agree this could be productive. We look forward to ICANN more precisely defining this department's remit, objectives and deliverables.

Action item

- ICANN will circulate the latest information regarding the Consumer Safeguards effort and ICWP will provide feedback as an initial step in participation.

We trust the above accurately summarizes our discussion and captures next steps. Thank you again for your engagement with the ICWP on these important matters. Please direct your reply to the Independent Compliance Working Party, c/o Fabricio Vayra, at ^{Contact information Redacted}.

Regards,

Adobe Systems, Inc.
DomainTools
eBay Inc.

Facebook, Inc.
Microsoft Corporation
Warner Media, LLC