

SECTION 1: The Effectiveness of ICANN's WHOIS Compliance Effort

Appendix A:

Letter from WHOIS Review Team Chair to Maguy Serad, Senior Director Contractual Compliance, ICANN Compliance

In follow-up to its extensive work with ICANN's Compliance Team, the WHOIS Review Team sent this letter laying out its findings, and detailed suggestions

Affirmation of Commitments Mandated WHOIS Policy Review Team

12 December 2011

To: ICANN Compliance
4676 Admiralty Way
Suite 330
Marina del Rey, CA 90292-6601 USA

Dear Maguy,

ICANN's compliance effort, detailed feedback

Over the past 12 months, the WHOIS Review Team (formed pursuant to the Affirmation of Commitments) has been engaged in assessing the extent to which ICANN's existing WHOIS policy and its implementation is effective, meets the legitimate needs of law enforcement and promotes consumer trust.

As part of that exercise, we have looked closely at the work of the Compliance Team, and have greatly appreciated your willingness to engage positively in this exercise.

We have met on a number of occasions (detailed in appendix 1 to this letter), most recently in Dakar, October 2011. During that meeting, we gave some detailed feedback on our findings and impressions to date. We discussed that, for the purposes of our published report, much of this feedback and suggested improvements would be too detailed for inclusion. Our aim in the report will be to keep our recommendations reasonably high level so that it is straightforward for the community to monitor progress against targets, and that the operational detail of *how* to implement various recommendations be left to those charged with making the improvements.

However, we discussed that it might be helpful for your programme of continual improvement to have our detailed feedback, and suggestions for improvements. This letter will be appended to our published report, but it is emphasised that the suggestions here are for your own management purposes. Except where they are repeated in our main report, they do not form the recommendations of the WHOIS Review Team.

This letter is structured as follows:

- It sets the scene with some high level comments and observations
- It reviews your operating principles

- It provides an inventory of the ICANN Compliance Team’s activities as reported in your web pages (i.e. the view available to interested stakeholders), and by the Compliance Team themselves.
- It highlights gaps between the Compliance Team’s stated objectives (embodied in your operational plan) and their implementation.
- It suggests some actions and priorities that may be undertaken in order to effect improvements.

It should be noted that much of our analysis was done in the summer of 2011. From our most recent interactions, we understand that you have already identified areas for improvement, and started to implement them. For example, we note that the web site experience has now changed. However, we have retained our analysis as a snapshot at a point in time, against which improvements can be measured.

Some high level comments

In order for a policy to be effective, it must not only be implemented, but also communicated effectively. Communication of policy is important because it feeds a public awareness of the norms and standards expected. Without effective communication, the legitimate expectations of the distinct stakeholder groups who rely on WHOIS will remain unmanaged, leading to sometimes unnecessary conflict, or complaints.

Our analysis of your website, and the effectiveness of your programme endorsed what you yourselves told us – ICANN’s compliance effort has historically been overstretched, and under resourced. It has struggled to obtain priority (in terms of strategy, budget or visibility) within the organisation, and to fill vacant positions.

As we are poised for the launch of new gTLDs, bringing a larger landscape, and new actors, this is a matter of deep concern to the WHOIS Review Team, which the entire community should share. For industry self-regulation to continue, it should be effective, impartial and seen to be so.

Compliance – operating principles

We have based our analysis around your operating principles, which are:

- Work constructively with registrars and registries to foster a culture of compliance.
- Proactively monitor compliance by contracted parties
- Resolve contractual compliance matters informally, if appropriate
- Aggressively pursue cases of non-compliance
- Maintain the highest standards of integrity and professionalism
- Continue to develop and enhance procedures for consistent handling of compliance matters

- Analyse WDPRS reports and consumer complaint data to analyse trends
- Provide timely reporting of Contractual Compliance activities

The principles themselves are strong, and sensible. They emphasise partnership with registries and registrars, as well as fostering a culture of compliance – the softer, normative controls which are essential in situations where the responsibility for a successful outcome is spread across a number of organisations, through to the individual registrant.

The use of jargon and operational detail is out of place in such a high level statement. We therefore suggest that you review the 7th principle, and provide for a more high level description of your aims in relation to responding to consumer complaints.

Overall, we recommend that the operating principles form the basis for your strategic planning, communication, and allocation of resources. If internalized through staff training, they will also provide a roadmap to empower staff and decentralize decision-making on the front-line.

Inventory of compliance activity

What do the public see? ICANN's website

In reviewing the effectiveness of ICANN's implementation of WHOIS policy, the Review Team considered what a member of the public, or other interested stakeholder would learn from ICANN's website.

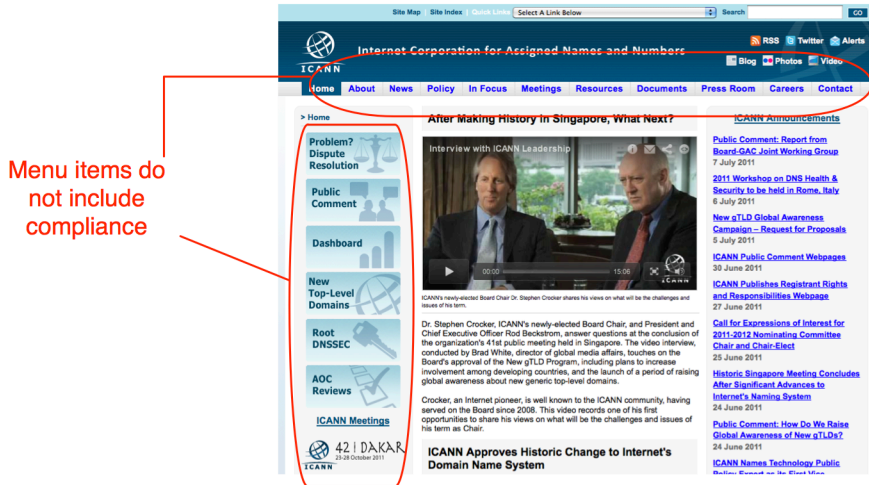
In general, strengths are the publication of the Compliance Team's operating plan, reports of your activities, and of studies on Data Accuracy and Privacy/Proxy. We note that the studies were not commissioned directly by the Compliance Team, but on the initiative of the GNSO. However, we include them in this analysis on the basis that the Compliance Team itself presented them to us as evidence of your work, and therefore we believe it is appropriate to make suggestions on suitable follow-up activities.

Areas for improvement are that locating information is extremely difficult: compliance pages are hidden away, heavy with jargon (eg WDPRS), and assume a level of knowledge by users which may not exist in practice. The home compliance page is a jumble of news links, mixed in with explanatory pages, and a user has to scroll down the page to find out what the Compliance Team is.

While the presentation of the pages may be thought of secondary importance compared to the work of the team itself, the WHOIS Review Team heard from Compliance Team staff that users tended to 'misunderstand' your role, what you could and could not do. Therefore, we emphasise that the effective communication of your work is essential to the Compliance Team's success, and to the effectiveness of your implementation of WHOIS policy.

Detailed comments on the website as at July 2011

Our review of the ICANN website in July 2011 found that it is difficult to locate the pages relating to contractual compliance from the home page:



A user can find the contractual compliance pages in two ways: first by following the “In focus” link (whose contents are not obvious from the label) from the top menus, and finding contractual compliance amongst an alphabetical list of ICANN’s activities; second, by following a single link located at the bottom of the home page:

broader Internet community has an opportunity to comment. Often one document will go through several stages of review and revision before being finalised. Below are all the comment periods that are currently open. [More...](#)

Title	Close Date [UTC Time]
New GNSO Policy Development Process	9 July 2011 [24:00]
How Do We Raise Global Awareness of New gTLDs?	15 July 2011 [24:00]
Preliminary Issue Report on the Current State of the UDRP	15 July 2011 [24:00]
WHOIS Policy Review Team – Discussion Paper	23 July 2011 [23:59]
Expanding Developing Economies Participation in the New gTLD Program	29 July 2011 [24:00]
Report from Board-GAC Joint Working Group	6 August 2011 [22:00]

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Having located the compliance pages, the user is presented with a jumble of news items (Notices of Breach, Termination and Non-Renewal, Compliance related correspondence, Updates to Notices). Only underneath this, is a heading “What is the ICANN Contractual Compliance Program?” which explains that “ICANN has a limited technical and policy coordination role” – an important piece of information for stakeholders, and one which the Compliance Team members observe has not filtered through into the minds of people who contact you asking for help.

Further down still, is the Compliance Team’s “Operating Plan”, which enunciates the 8 principles set out above.

Communication – keep your promises, manage expectations

We observed that the website carries the vestiges of initiatives or programmes which may no longer be current. This is unfortunate, as it creates a first impression of broken promises and inefficiency. The reality may simply be that initiatives have been discontinued but the website has not been updated. For example:

- The ICANN contractual compliance newsletters began in 2008 and are stated to be “monthly”¹. Indeed, there were 6 monthly newsletters between April-September 2008. Thereafter publication dropped off. There was a further newsletter in December 2008, one in October 2009 and then in April and October 2010. There have been no monthly newsletters published in 2011 (as of July 2011)².
- Likewise, the “Semi-Annual” reports³ were published once in 2007, and 2008, twice in 2009 and there have been none since.

It may be that these newsletters and semi-annual reports have been superseded with other forms of communications. But this is not clear to a casual user with no knowledge of ICANN’s inner workings.

How does ICANN describe its compliance work relating to WHOIS?

According to ICANN’s web pages relating to compliance, the Compliance Team’s work spans a range of ten areas, including functional and performance specifications, equivalent access to registry services, and data escrow. ICANN describes its WHOIS work in relation to Registries as follows:

“This is a multi-level area and the subject of an ongoing PDP. Registries are required to provide a public Whois service, containing required data elements. They must also provide access to the Whois data to ICANN and to a third-party operator in the event that a centralized Whois system is developed. Compliance questions include whether the registry is providing appropriate access, meeting

¹ April 2008: “Each month, the newsletter will cover....”

² See <http://www.icann.org/en/compliance/newsletter/>

³ See <http://www.icann.org/en/compliance/reports-archive-en.htm>, accessed 8 July 2011

update frequency requirements, and following bulk access provisions. We will continue to enforce any Whois policies which may be developed and adopted as a consensus policy as a result of the PDP. We are also working to coordinate with registries the use of compatible formats (as an example, the Whois Data Problem Report System which encompasses all registries but requires several mapping tables which must be maintained and corrected by staff).⁴

With regard to Registrars, ICANN describes their WHOIS obligations thus:

“This is a broad area in which accredited registrars have several obligations, including:

- provision of free public Whois service on Port 43 and via web;*
- submitting all required data elements to the registries;*
- updating data elements in a timely manner;*
- providing for bulk access to Whois data in accordance with the required bulk access agreement;*
- taking reasonable steps to correct inaccuracies upon notification;*
- providing annual Whois data reminders to registrants.*

Measures for ensuring compliance in this area may include routine Whois queries for each registrar, review of bulk access agreements, and investigation of registrar handling of inaccuracy and data reminder notifications⁵.”

Focus on specific compliance activities:

At the WHOIS Review Team’s meeting in January 2011, the Compliance Team presented a helpful review of your work, and highlighted the activities set out below. Your communication with the Review Team was characterized by openness, professionalism, and candour. You summarized your work as:

- Conducting audits to assess compliance with RAA provisions
- Investigating complaints of non-compliance
- Escalating cases in which registrars do not comply after informal efforts to bring those parties into compliance fail.

Audits

You informed us that the following WHOIS-related audits have been undertaken since 2008:

2010 – Registrar Whois Data Access Audit

⁴ <http://www.icann.org/en/compliance/gtld-compliance.htm>, accessed 11 July 2011.

⁵ <http://www.icann.org/en/compliance/registrar-compliance.htm>

2010 – Registrar Whois Data Reminder Policy Audit

2009 – Registrar Whois Data Reminder Policy Survey

2008 – Registrar Whois Data Reminder Policy Survey

2008 – Registrar Whois Data Inaccuracy Investigation Audit

WHOIS Data Access Audit 2010

The 2010-11 Registrar WHOIS Data Access Audit concluded that 99% of registrars comply with their contractual obligations to provide Port 43 access to WHOIS services. The Audit gave rise to 11 compliance interventions by the ICANN team, of which 10 were resolved through dialogue. In the single outstanding case, the registrar accreditation agreement was terminated for breach.

This is an example of a successful compliance intervention, and should be used as a model for future programmes:

- The parameters were limited, and reflected a contractual obligation which is clear to both registrars and ICANN.
- The follow-up action is well documented
- Compliance demonstrably improved as a result of the intervention.

Overall, this programme exemplifies ICANN compliance's first operating principle: *working constructively with registrars.*

Areas for improvement include communication, sustaining the momentum and developing performance measures/goals over time.

This is a successful compliance intervention, but the message is hidden amongst a plethora of links, updates (which assume pre-existing knowledge on the part of the user) and background information.

WHOIS Data Reminder Policy Audits 2008-2010.

Three of the above interventions relate to ICANN's WHOIS Data Reminder Policy. Confusingly, the acronym for this, WDRP, is nearly identical to one of the few other key compliance activities, the WHOIS Data Problem Reporting System, WDPRS – and ICANN is giving itself an unnecessary communications challenge in this regard.

At of July 2011, the 2010 WHOIS Data Reminder Policy Audit Report had not yet been published for comment.

The WHOIS Data Reminder Policy requires every registrar to send a notice to each registrant at least annually and remind the registrant that the provision of false data can be grounds for cancellation of a registration. Registrants must review their WHOIS data and make any necessary corrections.

Registrars told the WHOIS Review Team that the costs of sending the notices are substantial, e.g.:

- Support load is generated by registrants questioning why they received the notices;
- Disruption to business eg by being mistakenly blacklisted for spam as a result of sending out the notices.

According to the 2009 report (the 6th annual report on registrar compliance), 93% of registrars participated, of which 99% were found to be in compliance.

However, 83% of registrars who responded said that they were **unable to track the changes resulting from the WHOIS Data Reminder notices**. Therefore, it is impossible to measure the impact of this flagship policy on improving data accuracy.

Registrar Whois Data Inaccuracy Investigation Audit, 2008

Our main report will deal extensively with the issue of data accuracy, and set out targets for improvement. In brief, this ought to be the highest priority area for the Compliance Team in targeting resources, and crafting effective interventions.

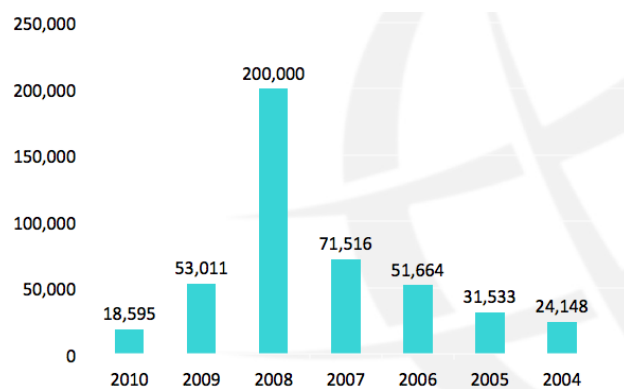
Investigate complaints of non-compliance

WHOIS Data Problem Report System (WDPRS)

ICANN introduced the WHOIS Data Problem Report System (WDPRS) in 2002, and is described as “*one of the tools developed to assist registrars in carrying out their responsibility to investigate WHOIS data inaccuracy claims*”⁶. The goal of the WDPRS is to streamline the process for receiving and tracking complaints about inaccurate and incomplete WHOIS data, and thereby help improve the accuracy of WHOIS data⁷.

Its purpose is to receive and track complaints about inaccurate or incomplete WHOIS data entries. Users can raise problems by completing an online form, which the Compliance Team then forwards to the registrar of record for appropriate action.

In your presentation to us in London, January 2011, you told us that the number of WDPRS Reports received by ICANN since 2004 is as follows⁸:



⁶<http://www.icann.org/en/compliance/archive/update-wdprs-enhancements-09mar11-en.htm>, accessed 11 July 2011.

⁷ www.icann.org/en/whois/whois-data-accuracy-program-27apr07.pdf, accessed 11 July 2011

⁸ Source: ICANN Compliance Team, presentation to WHOIS RT, January 2011.

Considering the NORC WHOIS Data Accuracy Study 2009/10⁹ finding that there was some inaccuracy in 77% of gTLD domain name records (equating to approximately 85.2 million gTLD inaccurate domain name records), and near total failure in 21% (equating to 25.4 million¹⁰), the number of WDPRS reports is small, and the base of complainants is tiny.

In 2007, 10 people were responsible for 87% of all WHOIS inaccuracy reports. This indicates that the programme is not widely known, and informal feedback indicates that it may be being used in bad faith by those targeting particular “valued” domain names.

In 2007, approximately 53% of the reports indicated “spam”, “phishing” or “fraud” in the comments accompanying the report, indicating a correlation between fraudulent or antisocial use and inaccurate WHOIS data.

As for follow-up, the WDPRS requires the registrar to report back to ICANN after 15 days. The Compliance Team provides a pro-forma template for the registrar to indicate what action was taken, as follows:

- a) registrar verified contact info is correct
- b) domain suspended, deleted or expired (system automatically closes ticket)
- c) contact info updated
- d) more time requested (one time option)

This is helpful, because it provides the opportunity to quantify the response, and provide metrics for success.

In 2007, ICANN reported that an estimated 35% of reported domain names with bad data were corrected, suspended, or no longer registered. An additional 28% of domains with clearly bad information were not changed. For the remaining 37% of reported domains, the WHOIS data was without obvious errors.

It is unclear why the 28% of domains with clearly bad data were not changed, and this is an area in which we will be making recommendations in our full report.

Given the prevalence of inaccuracy found by the NORC study in 2010, the significant drop in WDPRS in the same year is of concern. However, the follow up (measured by ICANN Compliance Team’s indicator of “registrars terminated or non-renewed”) has improved. 26% of terminations/non-renewals since 2007 reference WHOIS Non-compliance. While the improvement is positive, the low overall numbers of interventions relating to data accuracy are unlikely to make a significant improvement in the levels of inaccurate data in WHOIS.

⁹ <http://www.icann.org/en/compliance/reports/whois-accuracy-study-17jan10-en.pdf>

¹⁰ Derived from VeriSign Domain Name Industry Brief, Dec 2009 issue, which reports that the total number of domains registered is approximately 187 million, with the ccTLD base being 76.3 million. Therefore the total of gTLDs for the period nearest the NORC study is approximately 110.7 million. If 23% are completely accurate (25.4M) then 77% are in some way inaccurate (85.2M). See http://www.verisigninc.com/en_US/why-verisign/research-trends/domain-name-industry-brief/index.xhtml

Other WHOIS Related Work and Efforts – Studies and what to do with them.

In addition, you highlighted in your presentation (January 2011) the following WHOIS related work and efforts. Our report will consider the studies on Privacy/Proxy and WHOIS Accuracy in detail, and will note our general concern at the recent trend within the ICANN Community of for commissioning expensive reports, and then doing nothing with them. This is a comment directed at the highest levels of the organisation and community, and is not a criticism of the Compliance Team. Nevertheless, we would welcome a more joined up approach in future, which would view such studies as a resource for the benefit of the entire ICANN Community, and we encourage the Compliance Team to develop follow up measures within 3 months of the publication of studies funded by ICANN the corporation (no matter which entity within the Community commissioned the study) which are directly relevant to your work, eg those relating to WHOIS accuracy. Whilst it is laudable to adopt an evidence based approach, there must be tangible, measurable follow up in order to capitalize on the investment made in the reports.

What the stakeholders told us

Our report will review in detail the responses from across the ICANN community, and consumers with regard to the effectiveness of WHOIS policy and its implementation. Here, we highlight a few key points from our interactions from yourselves, the IP constituency and registries and registrars.

- All stakeholders, including you, told us that ICANN’s compliance effort had historically been poorly resourced and has struggled for organisational priority.
- You told us that lack of adequate contractual powers hamper your effectiveness. This view was not shared by others eg by the intellectual property constituency – who told us that the contracts provided adequate powers, but “no one is enforcing them”.
- You felt that people do not understand the role of the Compliance Team.
- All stakeholders we spoke to supported the introduction of progressive remedies for failure to comply.
- In striking contrast to the comments received from other constituencies, including ICANN’s Compliance Team, the Registries and Registrars were extremely positive about the effectiveness of the implementation of WHOIS policy.
- The Review Team notes that Registries and Registrars are sympathetic to the technical and operational challenges faced by the ICANN Compliance Team.
- The gap in perceptions between the Registries and Registrars (the contracted parties who are monitored by ICANN’s Compliance Team, through industry self-regulation) and all other constituencies merits further exploration.

Gap analysis

1) Communication

- Locating information on the website is difficult, compliance pages are hidden away, laden with jargon, and assume a level of knowledge by users which may not exist in practice. Documents referred to in the Compliance Team's answers to the WHOIS Review Team as plain English guides should be front and centre to the user experience. Poor or ineffective communication generates costs, inefficiency and support load. It also creates frustration for everyone.
- Operating principles are generally good, but the use of jargon is out of place in high level principles.
- Reporting of contractual compliance activities is far from timely (operating principle 8), eg "monthly" newsletters and "semi-annual" reports have not been published at all in 2011. If these have been replaced by other forms of communication, this is not clear.
- Key documents (eg the Privacy/Proxy study 2009) are missing, or only possible to locate with specific URLs.

2) Audits

- The 2010-11 Registrar WHOIS Data Access Audit is an example of a successful compliance intervention. Areas for improvement include communication, sustaining the momentum and delivering performance measures/goals over time. A summary of the detailed report would be helpful to the new comer. This should also be linked to the operating principles, as a successful example of working in partnership with registrars to foster a culture of compliance.
- The acronyms WDRP and WDPRS are confusingly similar, especially as they are two of the most significant ongoing compliance activities undertaken by the Compliance Team in relation to WHOIS. The use of the acronyms without explanation gives ICANN an unnecessary communications challenge.

3) Investigating complaints of non-compliance

- Given the prevalence of inaccurate WHOIS data, both the number of WHOIS Data Problem Reports, and the number of individual reporters (in 2007, 10 people were responsible for 87% of all WHOIS inaccuracy reports) are unacceptably low, indicating a low awareness level of this service amongst the target users of the system – consumers and users of WHOIS. It was striking that some members of the WHOIS Review Team, whose daily job involves conducting hundreds of WHOIS queries, were unaware of the service or how to report inaccurate data to ICANN.
- The system for WHOIS Data Problem Reporting generates a high level of duplicates. ICANN's compliance staff have inadequate workflow systems or automation to

enable them to keep on top of their existing workload – this provides an internal disincentive to ensuring that the system is better known and more widely used.

4) **Other WHOIS Related work and efforts – Data Accuracy**

- Data accuracy – the low level of accurate WHOIS data is unacceptable, and decreases consumer trust in the WHOIS, in the industry of which ICANN is a quasi-regulator, and therefore in ICANN itself. The organisation’s priority in relation to WHOIS should be to improve WHOIS data accuracy and sustain improvement over time. It should develop a methodology to measure overall accuracy, publish performance targets, and actively collaborate with registrars and registrants to improve data accuracy.
- Just as there is no shared understanding, or statement of the purpose of WHOIS, key concepts, such as “data accuracy” mean different things to different stakeholders. Further work is required, involving all interested stakeholders, to develop a common understanding and statements of the purpose of WHOIS and key concepts within it.
- The NORC WHOIS Data Accuracy Study 2009/10 identified that a key cause of inaccuracy was confusion amongst registrants when completing WHOIS data. If the industry wants to improve accuracy of data, it is necessary to think through the core WHOIS data set from the perspective of a commonly understood WHOIS Purpose, and creating a streamlined, understandable data set for registrants to complete. A number of stakeholder groups, notably SSAC, have been thinking deeply about these issues for a number of years.
- It is unclear what the response of the Compliance Team to the NORC WHOIS Data Accuracy Study 2009/10 has been. This leads to the impression that expensive, time consuming studies are being undertaken, and then left to languish. An action plan should already have been published by now, including measurable targets, and key performance indicators. If this has happened, the WHOIS Review Team is unaware of it.

Suggested actions

Making the operating plan operational. Overarching recommendations:

- 1. To foster a culture of compliance, through dialogue with registries and registrars, explore how to create incentives to reward good behaviour, rather than focus exclusively on punishing bad actors.**
- 2. As demand will always exceed the available resources, the compliance effort must be strategic, focus on achieving measurable, stated objectives, and should be pro-active rather than reactive.**

1) Communication

1. Review operating principles to ensure that the importance of effective communication of policy and compliance activities is reflected.
2. Review the compliance section of the ICANN website, to ensure that communicates to the newcomer. Aim to communicate the purpose of the compliance effort, its operating principles, and in relation to WHOIS the basics of the service, and the role and responsibilities of all the actors in the supply chain.
3. Use the operating principles as the benchmark for performance targets, and the first priority to eliminate gaps. For example, do not promise “monthly” newsletters and “semi-annual” reports, if they are not going to be delivered.
4. Ensure that all key documents are readily accessible by ordinary users.

2) Audits

5. Use successful compliance interventions (such as the WHOIS Data Access Audit 2010) to develop key performance indicators. Create summaries of the detailed reports, aimed at the new comer, and expressly link the compliance activity back to the operating principles. Ensure that key documents are easy to locate on the website.
6. Eliminate jargon and acronyms, and address the use of two confusingly similar acronyms – WDRP and WDPRS – for two different WHOIS compliance activities.

3) Investigating complaints of non-compliance

7. Improve consumer awareness of existing systems for reporting problems with WHOIS data. Develop performance targets based on consumer awareness, and increased use of the system.
8. Ensure that the Compliance Team has adequate workflow systems and automation to handle an increased workload.
9. Investigate the reasons why reporting of inaccurate WHOIS data has fallen. Explore ways to raise awareness amongst users of WHOIS (i.e. law enforcement, brand protection, and those buying and selling domain names) of existing mechanisms provided by ICANN for the reporting of inaccurate data. Report on the findings.

4) **Other WHOIS Related work and efforts**

10. Data accuracy – identify easy wins from the NORC WHOIS Data Accuracy study 2009/10. These include tardiness in keeping data up to date. Working in partnership with registrars, ICANN should plan effective communications plans or other interventions to address and improve registrant data accuracy.

11. Within 3 months, of the publication of this report, the Compliance Team should publish your response and action plan to the NORC WHOIS Data Accuracy Study 2009/10, with measurable, achievable targets for improvement over a 3-5 year period, and budgetary implications. In response to future WHOIS studies, the Compliance Team should publish its response and action plan within 6 months of the publication of the relevant study.

Yours sincerely,

Emily Taylor
WHOIS Policy Review Team Chair

Appendix – Interaction with Compliance Team and other stakeholders.

In approaching its task to understand the effectiveness of ICANN's implementation of its existing WHOIS policy, the Review Team undertook the following consultations:

- ICANN's contractual Compliance Team:
 - Presentation at London meeting (January 2011)
 - Face to face meeting in Singapore (June 2011)
 - Visit to Marina del Rey offices (July 2011)
 - Informal interactions
 - Face to face meeting in Dakar (October 2011)
- Registries and registrars
 - Face to face meeting, focused on compliance (June 2011).
- Other stakeholders
 - Law enforcement (January 2011)
 - ICANN's Intellectual Property Constituency (IPC) (telecon, May 2011)
 - ICANN's Business Constituency, ISPs' Constituency and IPC face to face meeting (June 2011)
 - ICANN's At Large Advisory Committee (ALAC) face to face meeting (June 2011)
 - ICANN's Non-Commercial Users' Constituency (NCUC) face to face meeting (June 2011).
- Public comment
 - The Review Team's discussion paper, published in June 2011, raised 7 questions relating to implementation.

In July 2011, members of the WHOIS Review Team visited the Marina del Rey offices for a 2 day meeting with the ICANN Compliance Team. Also present was a member of ICANN's legal team. The Review Team were unclear as to the reason why ICANN felt it was necessary to have one of their in-house Counsel present at this meeting. Although the WHOIS Review Team would not put it as strongly as the Accountability and Transparency Review Team, that some members of the staff were "laboring under an attitude of inordinate defensiveness and distrust of the review team and the review process" the presence of legal counsel a meeting essentially concerned with operational practices contributed to creating an impression of management

discomfort about having members of the WHOIS Review Team interact with staff in this way.

Otherwise, the WRT found that:

- There is no shortage of activity within the Compliance Team. The staff work hard, are committed to their task within their meager resources.
- The Compliance Team regard their “toolbox” of available sanctions / actions as limited (ie termination of contract), and see the need for progressive remedies.
- The Compliance Team is small in number, and is currently overstretched on its current workload. Without a significant injection of resources, and more strategic focus on priorities, ICANN’s compliance effort will continue to fall short of expectations.
- Compliance efforts appear to be focused exclusively on registrars. The WHOIS Review Team members were unable to identify any compliance efforts focused on registries.
- Compliance efforts appeared to be reactive, complaint driven, without a sense of focusing on bad actors, or of normalizing complaint levels to take account of the diversity of user bases served by different registrars.

Appendix B:

**Correspondence between WHOIS Review Team and ICANN Staff
in relation to Compliance budget and staff numbers (March-April
2012)**



Whois Review Team

Denise Michel, Advisor to ICANN President & CEO
Stacy Burnette, Director, ICANN Contractual Compliance
Liz Gasster, Senior Policy Counselor, ICANN Policy Support

20 January 2010

Overview – Whois Compliance & Policy

- Whois protocol is ~25 years old (RFCs 812/954/3912 from 2004)
- ICANN requirements for gTLD registries and registrars are largely unchanged since 1999
- RAA [revisions approved by Board](#) - 21 May 2009
 - New form of the RAA applies to all new registrars, registrars that renew after the approval date, and all registrars that voluntarily adopt the new contract prior to their renewal date

Whois Compliance

- ICANN Compliance activities have increased significantly over the last decade:
 - Enforcing ICANN' s Contracts & Policies
 - Conducting audits, investigating non-compliance claims,
 - Developing processes for addressing contract
- Compliance information [online](#)

3

Whois Policy

- Basic policy issues of concern: access, accuracy, privacy, obsolescence of protocol, costs to change
- 10+ years of community working groups, workshops, surveys, studies, etc. resulting in some significant policy change
- Wealth of information and voluminous input record
- Whois Policy activities [online](#)

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Whois in Affirmation of Commitments

- Whois highlighted in the [Affirmation](#) reflects longstanding community concerns about the accuracy and reliability of Whois information
 - 2006 [Joint Project Agreement](#) contains essentially the same statement of existing policy as the language in the Affirmation
 - Applicable laws reflects changes

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Whois in Affirmation of Commitments

- AoC Whois objective – assessment to assure that the current Whois policy and its implementation is effective and meets these needs critical for all stakeholders.
- Key challenge – and highly valuable deliverable – is developing the right measures to perform the assessment; right metrics and identifying the gaps would be of tremendous value to ICANN and the ICANN community in the future.

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Whois Information

- Whois Team [Wiki](#) – Background info
- ICANN [website](#)
 - [Compliance](#)
 - [Policy](#)
- Email Team questions for ICANN Staff to Denise Michel

What is ICANN Doing in Compliance to Enforce the Existing Whois Policy?

*By Stacy Burnette
Director, Contractual Compliance
ICANN
20 January 2011*

Agenda

- Background Regarding ICANN' s Compliance Program
- Contractual Compliance Program Overview
- Relevant RAA Provisions
- What is ICANN Doing to Enforce Whois Policy
 - Whois Audits
 - WDPRS
 - Registrars Terminated/Non-Renewed
 - Other Whois Related Work and Efforts
 - Successes and Challenges

Background Regarding ICANN' s Compliance Program

- Program introduced in 2007 with 2 employees
- By early 2010, the Compliance team had 7 permanent + 3 temp employees
- Presently, the team has 5 permanent + 1 temp employees
- Efforts are underway to fill open positions and make necessary operational and structural changes

Contractual Compliance Program Overview

- Manage Relationships with ~970 ICANN Accredited Registrars and 17 Registries
- Enforce ICANN's Contracts & Policies (e.g. UDRP, Transfer, Whois, etc)
- Conduct Contract Audits
- Investigate Claims of Non-compliance
- Communicate Plans, Goals and Accomplishments (Reports, Newsletter and Website)
- Develop equitable processes for addressing contract non-compliance

RAA Whois Provisions

- 3.3 Public Access to Data on Registered Names
- 3.6 Data Escrow
- 3.7.7 Consent to Terms of Registration Agreement
- 3.7.8 Reasonable Steps to Investigate Whois Inaccuracies

RAA Whois Provisions

■ 3.3 Public Access to Data on Registered Names

- This provision requires registrars to provide free public query-based access to Whois data of all registered domain names (Port 43 and Interactive website).
- This provisions sets forth the required Whois data elements.

RAA Whois Provisions (cont.)

■ 3.3 cont. - Required Whois Data Elements

- The name of the Registered Name;
- The names of the primary nameserver and secondary nameserver(s) for the Registered Name;
- The identity of Registrar (which may be provided through Registrar's website);
- The original creation date of the registration;
- The expiration date of the registration;
- The name and postal address of the Registered Name Holder;
- The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the technical contact for the Registered Name; and
- The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the administrative contact for the Registered Name.

RAA Whois Provisions (cont.)

- **3.6 Data Escrow**
- This provision requires registrars to provide a backup copy of all of their domain name registration data to a reliable third party data escrow company.

RAA Whois Provisions (cont.)

- **3.7.7 Obligation to Flow Down Certain Whois Terms to Registrants**
- This provision requires registrars to maintain a registration agreement with each registrant that includes the following provisions:
 - 3.7.7.1 registrant to provide and maintain accurate contact information
 - 3.7.7.2 registrant in breach of agreement if false Whois is provided and if the registrant fails to correct Whois data within 15 days of notification from the registrar
 - 3.7.7.3 registrants who license use of a domain name to a third party must provide their full contact details, and disclose the identity of a licensee or accept liability for harm caused by wrongful use of the domain

RAA Whois Provisions (cont.)

- **3.7.8 Reasonable Steps to Investigate Whois Inaccuracies**
- This provision requires registrars to take reasonable steps to investigate a Whois inaccuracy upon notification of a Whois inaccuracy
- This provision requires registrars to take reasonable steps to correct an inaccuracy, in the event the registrar learns of inaccurate contact information associated with a domain name.

What is ICANN doing to enforce Whois policy?

- Conduct audits to assess compliance with RAA provisions
- Investigate complaints of non-compliance
- Escalate cases in which registrars do not comply after informal efforts to bring those parties into compliance fail.

Past Whois Related Compliance Audits

- 2010 – Registrar Whois Data Access Audit
 - 3 breach notices issued
- 2010 – Registrar Whois Data Reminder Policy Audit
- 2009 Registrar Whois Data Reminder Policy Survey
- 2008 - Registrar Whois Data Inaccuracy Investigation Audit
 - 3 breach notices issued
- 2008 – Registrar Whois Data Reminder Policy Survey

Past Whois Related Compliance Audits

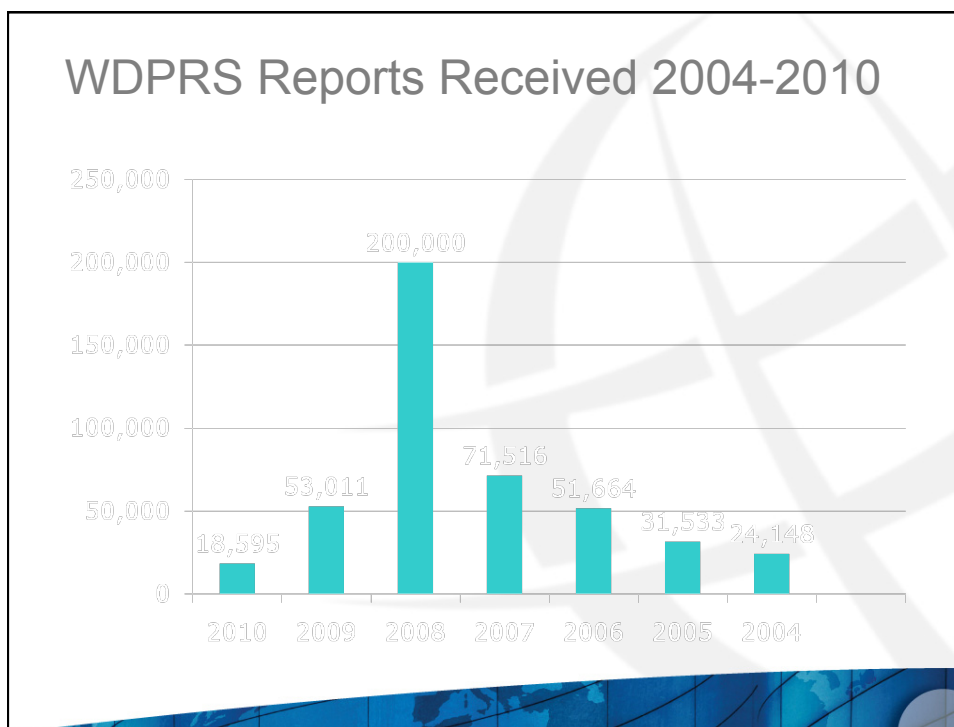
- 15 Compliance Audits Conducted Since 2007
- 5 Compliance Audits Concerned Whois Access/Whois Accuracy
- 33% of all Compliance Audits Conducted Concerned Whois Provisions

Whois Related Compliance Audits Planned for 2011

- Registrar 3.7.7 Compliance Audit
 - This audit is intended to assess whether registrars have required provisions in their registration agreements regarding the provision of accurate Whois data
- Registrar Whois Data Access Audit
 - This audit is continual and intended to determine if registrars are providing 24 hour access to Whois data via Port 43

The Whois Data Problem Report System (WDPRS)

- The WDPRS was developed to:
 - Improve Whois accuracy
 - Assist registrars in complying with RAA Whois provisions regarding the investigation of Whois inaccuracy claims
- The WDPRS allows the public to file reports of Whois inaccuracy regarding active domain names



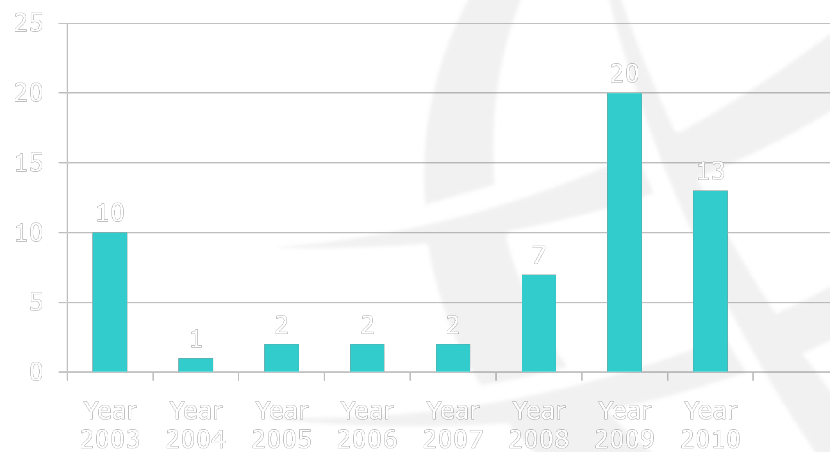
WDPRS Enhancements Intended to Improve Whois Accuracy

- Registrar Action Message after 15 days includes multiple choice options to demonstrate what action was taken:

- registrar verified contact info is correct
- domain suspended, deleted or expired (system automatically closes ticket)
- contact info updated
- more time requested (one time option)

- Automated compliance notices sent to registrars for failure to take action regarding Whois inaccuracy claims.

57 Registrars Terminated or Non-Renewed from 2003-2010



26% of Terminations/Non-Renewals Referenced Whois Non-Compliance

- 2010 – 4 Terminations/Non-Renewals Referenced Whois Violations
- 2009 – 10 Terminations/Non-Renewals Referenced Whois Violations
- 2008 – 0 Terminations/Non-Renewals Referenced Whois Violations
- 2007 – 1 Termination Referenced a Whois Violation

Other Whois Related Work and Efforts

- Published Whois Data Accuracy Study
<http://www.icann.org/en/compliance/reports/whois-accuracy-study-17jan10-en.pdf>
- Published Privacy/Proxy Study
<http://www.icann.org/en/compliance/reports/privacy-proxy-registration-services-study-28sep09-en.pdf>

Other Whois Related Work and Efforts (cont.)

- Provide Whois Data Accuracy information on ICANN's website and in response to e-mail and telephone inquiries
- Provide information to registrars to encourage Whois compliance via newsletters, advisories and outreach events

Other Whois Related Work and Efforts (cont.)

- Continue to enforce the current RAA provisions regarding Whois
- Contribute to discussions regarding Whois policy proposals
- Fill open staff positions
- Assess future enforcement needs and recommend appropriate resource enhancements to meet those needs

Compliance Program Successes and Challenges

■ Successes

- 26% of Termination/Non-Renewal actions concerned Whois violations
- 33% of Compliance audits conducted concerned Whois provisions
- Recently developed Whois access auditing tool provides daily reports regarding non-compliant registrars
- Registrar terminations have served as a deterrent for registrar non-compliance

Compliance Program Successes and Challenges

- Challenges

- Community misunderstandings regarding ICANN's power and authority
- Community misunderstandings regarding the scope of registrars' Whois obligations
- Community expectations vary greatly regarding what should be the focus of ICANN's compliance program

Compliance Program Successes and Challenges

- Challenges (cont.)

- Growth of registrars and registrations vs. resources demand (human and financial)
- Communication of compliance program successes

Questions?

Report to the WHOIS Review
Team

Liz Gasster
Senior Policy Counselor -- ICANN
January 2011

Agenda

1. Overview of WHOIS policy changes over the years
2. Overview of current WHOIS policy-related work

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Historical View of Policy Changes

1. Prohibitions on bulk access to WHOIS for marketing purposes, designed to protect registrant contact data from mining for marketing (Board action March 2003, policies effective November 2004).
2. A new annual "Data Reminder Policy", designed to improve WHOIS accuracy (effective October 2003).
3. A Restored Names Accuracy Policy that applies when names have been deleted because false contact data was submitted or because there was no response to registrar inquiries, also intended to improve WHOIS accuracy (effective 12 November 2004).

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Historical View of Policy Changes, Continued

4. Several policy development reports that define the purpose of the Registered Name Holder, technical, and administrative contacts, in the context of the purpose of WHOIS, and the purpose for which the data is collected (2005-2007).

5. New ICANN Procedure for Handling WHOIS Conflicts with Privacy Law, to be used in cases where gTLD registry/registrar are prevented by local laws from complying with ICANN contract terms regarding personal data in WHOIS (effort began in 2003, approved by GNSO in 2005, effective in January 2008).

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Current WHOIS Policy Work

- WHOIS studies
- WHOIS Service Requirements Inventory Report
- Joint SSAC-GNSO Internationalized Registration Data working group
- Proposed RAA amendments on WHOIS
- WHOIS-related issues have arisen in other working groups:
 - Inter-Registrar Transfer Policy
 - Registration Abuse

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Goals of WHOIS Studies



- WHOIS policy has been debated for many years
- Many competing interests with valid viewpoints
- GNSO Council hopes that study data will provide objective, factual basis for future policy making
- Council identified several WHOIS study areas to test hypotheses that reflect key policy concerns
- Council asked staff to determine costs and feasibility of conducting those studies
- Staff used an RFP approach to do so

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1. WHOIS Misuse

- Assess whether public WHOIS significantly increases harmful acts and impact of anti-harvesting measures
 1. Survey registrants, registrars, research and law enforcement orgs about past acts.
 2. Measure variety of acts aimed at WHOIS published vs. unpublished test addresses.
- Status
 - 3 RFP responses received and analyzed in March 2010
 - Council decided to proceed with study in September 2010
 - Contract establishment now underway

<http://gns0.icann.org/issues/whois/tor-whois-misuse-studies-25sep09-en.pdf>

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2. WHOIS Registrant Identification

- Determine how registrants identify themselves in WHOIS, and to what extent are domains registered by businesses or used for commercial purposes
 1. Are not clearly identified as such in WHOIS; and
 2. Related to use of Privacy & Proxy registration services
- Status
 - 5 RFP responses received and analyzed in March 2010
 - Pending GNSO council motion (if any) to proceed

<http://gns0.icann.org/issues/whois/whois-registrant-identification-studies-23oct09-en.pdf>

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3. WHOIS Privacy/Proxy Abuse

- Compare broad sample of Privacy & Proxy-registered domains associated with alleged harmful acts to assess
 1. How often "bad actors" try to obscure identity in WHOIS
 2. How this rate of abuse compares to overall P/P use
 3. How this rate compares to alternatives like falsified WHOIS data, compromised machines, and free web hosting
- Status
 - 3 RFP responses received and analyzed in September 2010
 - Pending GNSO council motion (if any) to proceed

<http://gns0.icann.org/issues/whois/gns0-whois-pp-abuse-studies-report-05oct10-en.pdf>

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Staff Analysis

- Estimated cost/duration -- \$150,000, < 1 year to complete
- Live-feed sampling tractable for many activities, including
 - Spam, phishing, malware, software piracy, counterfeit merchandise, money laundering, child pornography, and cyber/typo squatting
- Researchers found some activities irrelevant or too difficult
 - On-line stalking, DoS, DNS poisoning, media piracy, fee fraud

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Staff Analysis, Continued

- Unlikely to reliably filter out "false positives"
- Despite limitations, results might be useful to:
 - Supply empirical data on how often alleged bad actors obscure their identity using methods including (but not limited to) P/P abuse
 - If P/P rate is high among bad actors, as compared to a control sample or alternative methods, policy changes may be warranted

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4. WHOIS P/P Relay & Reveal

- Analyze communication relay and identity reveal requests sent for Privacy & Proxy-registered domains:
 1. To explore and document how they are processed, and
 2. To identify factors that may promote or impede timely communication and resolution.
- Status
 - RFP posted 29 September 2010
 - Responses due 30 November from interested bidders

<http://www.icann.org/en/announcements/announcement-29sep10-en.htm>

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Study Area/Topic	Proposal X-ref	Specific studies defined	Current status	Other Information
1. WHOIS Misuse Studies Extent to which publicly displayed WHOIS data is misused	Study # 1, #14, #21 GAC data set 2	1.Experimental: register test domains and measure harmful messages resulting from misuse 2.Descriptive: study misuse incidents reported by registrants, researchers/ law enforcement	Council decided 8 Sept 2010 to proceed with this study. Cost: 150,000 Time estimate: 1 year	<ul style="list-style-type: none"> • Can count and categorize harmful acts attributed to misuse and show data was probably not obtained from other sources • Some acts might be difficult to count • Cannot tie WHOIS queries to harmful acts, which makes it difficult to prove that reductions in misuse were caused by specific anti-harvesting measures • Difficult to assess whether misuse is "significant"
2. WHOIS Registrant Identification Study	GAC 5, GAC 6 #13a, #18 GAC 9, GAC 10	1.Gather info about how business/commercial domain registrants are identified 2.Correlate such identification with use of proxy/privacy services	5 RFP responses received. Staff analysis to Council on 23 March 2010. Cost: 150,000 Time estimate: 1 year	<ul style="list-style-type: none"> • Can classify ownership and purpose of what appear to be commercial domains without clear registrant information, and measure how many were registered using a P/P service • Might provide insight on why some registrants are not clearly identified • Use of P/P services by businesses
3. WHOIS Privacy and Proxy "Abuse" Study	#17, #19 GAC 1, GAC 11	Compare broad sample of P/P-registered domains associated with alleged harmful acts with overall frequency of P/P registrations gns0.icann.org/issues/whois/gns0-whois-pp-abuse-studies-report-05oct10-en.pdf	3 RFP responses received. Staff analysis to Council on 5 October 2010. Cost: 150,000 Time estimate: < 1 year	<ul style="list-style-type: none"> • Can sample many harmful acts to assess how often alleged "bad actors" try to obscure identity in WHOIS • Compare bad actor P/P abuse rate to control sample <i>and</i> to alternatives like falsified WHOIS data, compromised machines, and free web hosting • Some kinds of acts not sampled due to irrelevance and/or difficulty • Cannot reliably filter out "false positive" incident reports
4. WHOIS Privacy and Proxy "Relay & Reveal" Study	#3, #13b, #13c, #20	Analyze relay and reveal requests sent for P/P-registered domains to explore and document how they are processed	RFP posted on 29 September, responses due 30 November 2010.	RFP and Terms of Reference: www.icann.org/en/announcements/announcement-29sep10-en.htm

<http://gns0.icann.org/whois/whois-studies-chart-october.pdf>

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WHOIS Service Requirements Inventory

- In May 2009, the GNSO Council requested that Policy Staff, with the assistance of technical staff and GNSO Council members, collect and organize a comprehensive set of requirements for the WHOIS service policy tools. These requirements should reflect not only the known deficiencies in the current service but should include any possible requirements that may be needed to support various policy initiatives that have been suggested in the past.
- The synthesis of requirements should be done in consultation with the SSAC, ALAC, GAC, the ccNSO and the GNSO and a strawman proposal should be prepared for these consultations. The Staff is asked to come back with an estimate of when this would be possible.

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Goals

- To collect and organize a set of requirements for community consideration including:
 - Current features identified as needing improvement
 - features to support various, past policy proposals
 - features recommended by ICANN SOs, ACs, community

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Compilation Includes

- Mechanism to find authoritative WHOIS servers
- Structured queries
- Well-defined schema for replies
- Standardized errors
- Standardized set of query capabilities
- Quality of domain registration data
- Internationalization
- Security
- Thick vs. Thin WHOIS
- Registrar abuse point of contact

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Joint SSAC-GNSO WG on WHOIS Internalized Registration Data

- **Problem:** Internationalized domain name (IDN) guidelines exist for domain labels and names. No standards exist for submission and display of domain name registration data in WHOIS services (includes both interactive web page and port 43) service
- **Goal:** Study the feasibility and suitability of introducing submission and display specifications to deal with the internationalization of Registration Data

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4 Models for Internationalized Registration Contact Data

The IRD-WG members discussed four possible models but did not endorse any particular model. They are seeking comment now on these models:

- Model 1: Registrants provide domain contact data in “Must Be Present” script.
- Model 2: Registrants provide data in any registrar-accepted script and registrars provide point of contact for transliteration or translation.
- Model 3: Registrants provide data in script accepted by the registrar and registrars provide transliteration tools to publish in “Must be Present” script.
- Model 4: Registrants provide data in language accepted by the registrar and registrars provide translation tools to publish in a “Must be Present” script.

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Joint GNSO ALAC WG on Amendments to the RAA

- Chartered in 2009 to identify potential topics for amendments to the RAA
- Developed list of high and medium priority amendments to be considered by the GNSO
- ICANN COO also weighed in from the perspective of enforcement of the RAA through ICANN's contractual compliance work.
- COO memo noted aspects of the RAA that are hard to enforce, or where there are significant mismatches between community expectations and actual enforcement provisions and tools

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Joint GNSO ALAC WG on Amendments to the RAA, cont.

Item No.	Description
1	Prohibition on registrar cybersquatting
2	Malicious conduct – registrar duty to investigate
3	Designation and publication of a technically competent point of contact on malicious conduct issues (available 24/7 basis)
4	Disclosure of privacy/proxy services made available by registrar; Responsibility of registrar for compliance by such services
5	Obligations of privacy/proxy services made available by registrar re: Data escrow; Relay function; Reveal function
6	Registrar responsibility for cancellation of registrations made by other privacy/proxy services for noncompliance with Relay and Reveal

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Joint GNSO ALAC WG on Amendments to the RAA, cont.

Item No.	Description
7	Define circumstances under which registrar is required to cancel registration for false Whois data and set reasonable time limits for registrar action
8.	Require PCI compliance in registration process
9	Define “reseller” and clarify registrar responsibility for reseller compliance
10	Require greater disclosure of registrar affiliates/multiple accreditations
11	Require greater disclosure of registrar contact information, information on form of business organization, officers, etc.
12	Clarification of registrar responsibilities in connection with UDRP proceedings

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Medium Priority

- Spell out registrar “verification” process after receiving false WHOIS data report
- Require links to WHOIS Data Problem Reporting System on WHOIS results pages and on registrar home page
- Service Level Agreement on WHOIS availability
- Registrar to disclose resellers and vice versa
- Expand scope of authority to terminate accreditation

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Medium Priority, Continued

- Require registrars to report data breaches
- Streamline arbitration process in cases of dis-accreditation
- Streamline process of adding new gTLDs to accreditation
- Registrar responsibilities for acts of affiliates
- Staff to draft registrar code of conduct if registrars fail to do so by time certain

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Key documents on RAA amendments

- ICANN COO memo to the drafting team on Compliance issues: see: <http://forum.icann.org/lists/gnso-raa-dt/msg00099.html>
- Staff notes on the implementation of possible amendments to the RAA. This report discusses ICANN's compliance activities related to the RAA, and identifies subjects to be considered as the community discusses possible additional amendments to the RAA: <http://gnso.icann.org/issues/raa/staff-notes-raa-additional-amendments-14oct09-en.pdf>
- Staff memo advising the RAA working group on available options to amend the RAA: <http://forum.icann.org/lists/gnso-raa-b/msg00123.html>
- Final Report on Proposals for Improvements to the RAA: <http://gnso.icann.org/issues/raa/raa-improvements-proposal-final-report-18oct10-en.pdf>

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A Note on RESTful WHOIS

- ICANN conducted a workshop on a potential implementation of RESTful WHOIS in Cartagena
- Discussion paper prepared in advance
- Goal – to discuss with the community a possible “RESTful WHOIS” implementation based on a web-based REST approach. ARIN and RIPE have implemented their own customized versions
- REST is XML-based and output supports easier automation, expanded search capability, uses UTF-8 encoding which will accommodate internationalized display of contact information. Further potential to be determined.

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Questions?

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Thank You!

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Compliance Numbers

On Wed, Mar 14, 2012 at 4:45 PM, Emily Taylor <emily@emilytaylor.eu> wrote:

Hi Denise

During our call to staff the other week, we asked for numbers of compliance staff over time since 2007 (?) when the team was set up. We asked for names, but JJ suggested numbers instead- that is fine. Please would you split out permanent staff, temps/contract staff and vacant positions.

Many thanks,

Emily

From: **Denise Michel** <michel.denise@gmail.com>
Date: 20 March 2012 19:31
Subject: Re: [Rt4-whois] Compliance numbers
To: Emily Taylor <emily@emilytaylor.eu>
Cc: "rt4-whois@icann.org" <rt4-whois@icann.org>

Dear Emily (& Team):

Attached is information on full time positions of ICANN's Compliance Team over time.

They're looking into the history of temps and vacancies and I will keep you apprised.

Regards,
Denise

Denise Michel
michel.denise@gmail.com

Contractual Compliance Staffing

[Published on our website:](#)

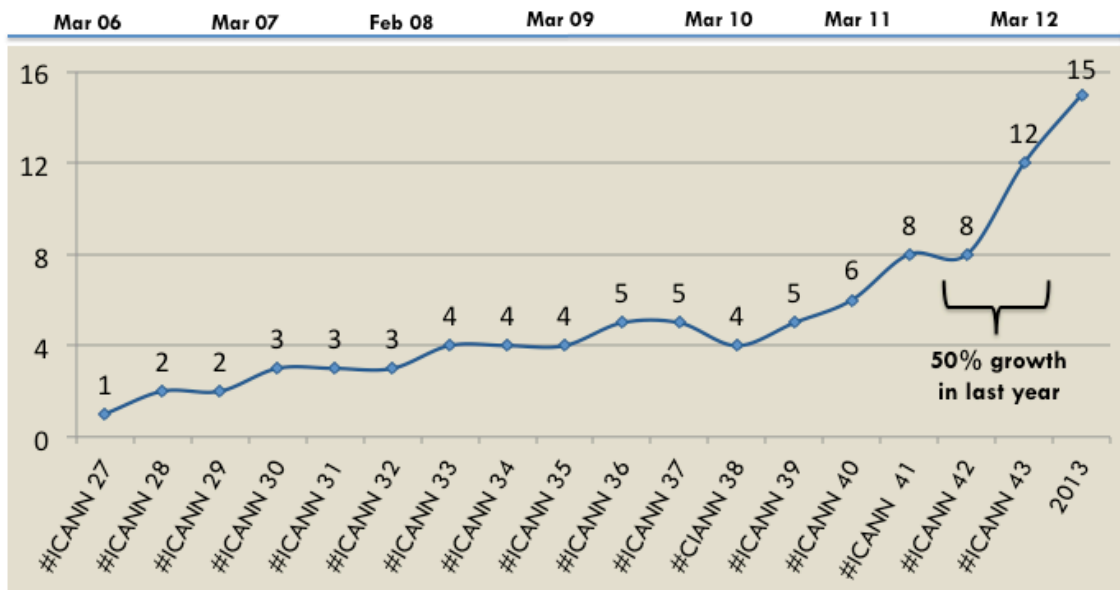
Since the ICANN 42 Public Meeting in Dakar, the Contractual Compliance department has **added four team members**. The 12-person team collectively speaks [seven languages](#): Arabic, English, French, Hindi, Mandarin, Spanish and Urdu. The new staff members fill key roles in Performance Measurement and Reporting, Risk and Audit Management and Compliance Complaint Analyst and Manager.

The Contractual Compliance team currently has a staff of twelve, with experiences in law, compliance, program management and business operations across a wide range of industries and services. Most team members are well versed in a broad range of community issues and concerns.

The Contractual Compliance department consists of:

- Head of Contractual Compliance (1)
- Registrar-Registry Compliance Team (9)
- Performance Measurement and Reporting (1)
- Risk and Audit Management (1)

Note: Staffing indicates full time roles performed by the compliance team



From: Emily Taylor <xxxxxxxxxxxx>
Date: Wednesday, March 21, 2012 10:53 AM
To: Denise Michel Alternative <xxxxxxxxxxxx>
Cc: "rt4-whois@icann.org" <xxxxxxxxxxxx>
Subject: Re: [Rt4-whois] Compliance numbers

Many thanks Denise

I'm a bit confused by these numbers, as they appear to be different from those given to us by the Compliance team when we met in January 2011 <https://community.icann.org/download/attachments/19300501/Whois+Review+Team+Jan+20%2C+2011.ppt?version=1&modificationDate=1295532126000>.

This gave staff numbers as follows:

- * 2007 - ICANN sets up compliance function. 2 employees
- * 2010 - 7 permanent members, 3 temporary
- * 2011 - 5 permanent + 1 temp.

Can you help us out with these differences - particularly Mar 10, where it appears from these figures that there were 4 members of staff, and from ICANN's compliance team's presentation that there were 10 (ie 7 permanent + 3 temp).

Looking forward to your response.

Kind regards

Emily

On Wed, Mar 21, 2012 at 11:57 AM, Emily Taylor <emily@emilytaylor.eu> wrote:

Hi Denise

As well as clarification on the discrepancies between the figures you sent us a few days ago, and Compliance's presentation (Jan 11) on staff numbers (NB it is particularly 2010 that we're interested in, plus vacant positions over time, and temporary staff), please would you also provide the following information:

1. Spend on compliance activities since 2007 (I would like budget vs actuals for each year please)
2. An org chart showing the names, or if this is not possible for any reason, the job roles in compliance over time.

Thanks

Emily

From: **Denise Michel** <xxxxxxxxxxxx>

Date: 21 March 2012 19:54

Subject: Re: Compliance numbers - further request

To: Emily Taylor <xxxxxxxxxxxx>

Hi, Emily.

I'll confer with John Jeffrey and Maguy Serad and will get back to you.

Regards,
Denise

Denise Michel
ICANN
Advisor to the President & CEO

Compliance Numbers - Clarification (2-3-4 April 2012)

From: **Emily Taylor** <xxxxxxxxxxxxx >

Date: 2 April 2012 18:58

Subject: Compliance numbers - clarification

To: Alice Jansen <alice.jansen@icann.org>

Cc: rt4-whois@icann.org

Hi Alice

I would be grateful if you could do a gentle reminder to Denise about our request for data on Compliance staff numbers, including names, temporary staff, budget vs actual spend over time.

Also, please would you ask Denise to clear up a discrepancy in the numbers given to us the other day. They have a lower figure for staff numbers than the ones provided by the Compliance team in their presentation to us of January 2011. Clarification would be helpful.

Kind regards

Emily

On 3 April 2012 00:31, Denise Michel <xxxxxxxxxxxxx> wrote:

Dear Emily (cc Team):

Below and attached is (corrected) historical data on Compliance staffing, including figures for temporary staff support. The discrepancy between the last set of data provided by the Compliance Team and the staffing information provided in slides presented to the Team in January 2011 was due to the inclusion of temporary staff support in the staffing numbers in the slides. The previous set of figures I forwarded included only full-time staff. In addition, a staff person was transferred from another department into Compliance and the previous data reflected her start date incorrectly. Please let me know if you have any further questions on this.

When you have a chance, could you please call me regarding historic budget information that the Team needs?

Thanks
Denise
Denise Michel
ICANN
Advisor to the President & CEO

Roles	2006	2007	(1st half) 2008	(2nd half) 2008	2009	(1st half) 2010	(2nd half) 2010	2011	2012	2013
Head of Compliance			1	1	1	1	0	1	1	1
Registrar-Registry Compliance	1	3	3	3	4	5	5	7	9	12
Performance Measurement & Reporting								1	1	1
Risk & Audit Management			1	1	1	1	0		1	1
Temporary services			0	1	1	3	1			
Total by year	1	3	5	6	7	10	6	9	12	15

On Tue, Apr 3, 2012 at 2:05 AM, Emily Taylor <xxxxxxxxxxxx> wrote:

Thank you for this Denise

Please would you also include the unfilled vacant positions over time in the same way. When we had our presentation from compliance last January, we heard that positions had remained open for a long time in some cases, and to complete the picture on staffing we also need to know this.

On budget vs actual spend, I think the query is quite straight forward, isn't it? We need to know the amount allocated in each year's

budget cycle for spend on compliance (which I assume is a budget line), vs the actual spend (so that we can look at the variance of actual vs budget).

Thanks

Emily

On 3 April 2012 23:30, Denise Michel <xxxxxxxxxxxx> wrote:

I'd like to get a clearer sense of what information the Team must have to validate its points (reach its conclusions about current Whois policy and implementation) and confirm what can be provided in the short term. I was hoping a discussion could enable us to reach this point more quickly.

In the last couple of years ICANN has instituted new internal systems that make it easier to track and report in detail on staffing, budget and expenditures. As with many "start-ups," new systems are forward looking and don't incorporate historic records. To go back to 2006 and indicate for each year which positions were open for how many days, and to determine how much budget was allocated to the Compliance function each year and how much was spent (when Compliance was located in a different department and was part of a different budget section prior to 2010) can be done, but will take a significant amount of Staff time during a particularly busy period for our budget/HR Staff (who currently are preparing the next fiscal year budget).

I want to be as helpful as possible, but I'm also trying to convey that more detailed historic information is not available at the push of a button and can't be provided without cost/staff time. While Staff is committed to providing the information the Team needs to fulfill its mission, I'd like to confirm how critical this level of detail is to the Team's final report. Can the Team complete its recommendations with the budget and staffing histories provided thus far, or with information on budget, spends, and position vacancies going back 3 years instead of 6?

I'm looking for feedback on whether there's another (quicker) way to meet the Team's needs given your final report deadline.

Thanks

Denise

Denise Michel

ICANN

Advisor to the President & CEO

From: Emily Taylor <xxxxxxxxxxxx>

Date: Wed, 4 Apr 2012 01:16:38 -0700

To: "rt4-whois@icann.org" <xxxxxxxxxxxx>

Subject: [Rt4-whois] Fwd: Fwd: Whois RT

Sorry - forgot to "reply all"

----- Forwarded message -----

From: **Emily Taylor** <xxxxxxxxxxxx>

Date: 4 April 2012 09:16

Subject: Re: [Rt4-whois] Fwd: Whois RT

To: xxxxxxxxxxxx

Hi Denise

Thank you very much for that explanation, and I do appreciate the difficulties that you are talking about. I think your suggestion of going back 3 years instead of 6 sounds practical and useful. What we want to do is talk about the compliance effort really from 2009 onwards, once the department started to move from "start up" phase to gearing up to meet community expectations. I am also aware that when we met with Compliance in Jan 2011, there were references to open positions, temporary staff etc, and I would like to have a better understanding of that for our report. It is important, because of course implementation of WHOIS policy is at the heart of our mandate, and you can see from community feedback, and staff feedback, that it is viewed as an area for improvement.

Hope this is helpful.

Kind regards

Emily

From: Denise Michel <xxxxxxxxxxxx>

Reply-To: Denise Michel <xxxxxxxxxxxx>

Date: Wednesday, April 4, 2012 5:34 PM

To: Emily Taylor <xxxxxxxxxxxx>

Cc: "rt4-whois@icann.org" <xxxxxxxxxxxx>

Subject: Re: [Rt4-whois] Fwd: Fwd: Whois RT

This is helpful. We'll collect the information discussed from 2009 to present.

Thanks

Denise Michel

ICANN

Advisor to the President & CEO

Additional Information on Compliance Staffing and Budget (21-25 April 2012)

From: **Denise Michel** <xxxxxxxxxxxx>

Date: 21 April 2012 05:38

Subject: [Rt4-whois] Additional information on Compliance staffing and budget

To: rt4-whois@icann.org

Dear Emily and Team members,

As requested, attached is information on Compliance staffing, including vacancies, and budget and spend data for the past three years.

Please let me know if you have questions or need anything further.

Regards,
Denise

Denise Michel
ICANN
Advisor to the President & CEO

Friday, April 20, 2012

Contractual Compliance Staffing

20 April 2012 Update per WHOIS Policy Review Team's Request:
List detailed positions history, open requisition history since 2009 and
budget for past 3 years

[Published on our website:](#)

Since the ICANN 42 Public Meeting in Dakar, the Contractual Compliance department has **added four team members**. The 12-person team collectively speaks seven languages: Arabic, English, French, Hindi, Mandarin, Spanish and Urdu. The new staff members fill key roles in Performance Measurement and Reporting, Risk and Audit Management and Compliance Complaint Analyst and Manager.

As of March 5, 2012, the Contractual Compliance team has a staff of twelve, with experiences in law, compliance, program management and business operations across a wide range of industries and services. Most team members are well versed in a broad range of community issues and concerns.

The department consists of:

- Head of Contractual Compliance (1)
- Registrar-Registry Compliance Team (9)
- Performance Measurement and Reporting (1)
- Risk and Audit Management (1)

Note: Staff indicates **full time roles** performed by the compliance team with a specific job title/description, function and objectives.

Roles	2006	2007	(1st half) 2008	(2nd half) 2008	2009	(1st half) 2010	(2nd half) 2010	2011	2012	2013
Head of Compliance			1	1	1	1	0	1	1	1
Registrar-Registry Compliance	1	3	3	3	4	5	5	7	9	12
Performance Measurement & Reporting								1	1	1
Risk & Audit Management			1	1	1	1	0		1	1
Temporary services			0	1	1	3	1			
Total by year	1	3	5	6	7	10	6	9	12	15

Friday, April 20, 2012

Detailed positions history

The following table details the compliance resources since 2006.

	Total Year @ICANN	Count	Compliance Start Date	Position	End Date
			1 November 20, 2006	Director	
ICANN 27	Dec	2006	1		
			1 January 1, 2007	Specialist	
ICANN 28	Mar	2007	2		
ICANN 29	Jun	2007	2		
ICANN 30	Oct	2007	3		
ICANN 31	Feb	2008	3		
ICANN 32	Jun	2008	3		
			1 September 1, 2008	Temporary (converted to Analyst in 2011)	
			1 October 2, 2008	Senior Director	July 31, 2010
			1 October 20, 2008	Manager (Auditor)	May 24, 2010
ICANN 33	Nov	2008	6		
ICANN 34	Mar	2009	6		
			1 April 20, 2009	Temporary	April 1, 2010
ICANN 35	Jun	2009	7		
			1 August 3, 2009	Senior Director	
ICANN 36	Oct	2009	8		
			1 December 2, 2009	Temporary	July 21, 2010
			1 February 1, 2010	Specialist	
ICANN 37	Mar	2010	10		
			-1 April 1, 2010	(-1 Temp)	
			-1 May 24, 2010	(-1 FTE)	
ICANN 38	Jun	2010	8		
			-1 July 21, 2010	(-1 Temp)	
			-1 July 31, 2010	(-1 FTE)	
ICANN 39	Dec	2010	6		
			0 January 1, 2011	Analyst (convert temp)	
			1 February 28, 2011	Manager	
ICANN 40	Mar	2011	7		
			1 April 4, 2011	Senior Director	
ICANN 41	Jun	2011	8		
ICANN 42	Oct	2011	8		
			1 November 14, 2011	Senior Manager (Perf. Measurement & Reporting)	
			1 February 20, 2012	Analyst	
			1 February 29, 2012	Manager (Risk & Audit)	
			1 March 5, 2012	Manager	
ICANN 43	Mar	2012	12		
			1 Late April 2012 date in 2012	Temporary for 3 month (staff aug) 3 more positions	

Open requisition history since 2009

Per WRT's request to obtain data regarding posting of positions since 2009, please note the table below. However the following assumptions apply:

1. Staffing headcounts and open positions only account for contractual compliance resources
2. The resources do not include the allocations for other ICANN back office support for ex. Accounting and finance, Information technology, project management office, legal assistance

Friday, April 20, 2012

3. Currently 1 open position for manager, however 2 posting are available one for Sydney and one for California to expand talent search.

Position Title	Date Opened	Date Closed
Sr. Director	6/1/08	11/14/08
Sr. Director	6/3/09	8/12/09
Sr. Director	8/1/110	3/2/11
Manager	12/13/10	2/28/11
Manager	3/2/11	5/27/11
Manager - Mdr	4/18/11	4/9/11
Sr. Manager	7/16/11	10/31/11
Manager - Mdr	8/12/11	3/5/12
Manager - Singapore	8/13/11	1/26/12
Analyst - Mdr	4/9/12	open
Manager - Sydney/Mdr	4/9/12	open
Analyst - DC	4/9/12	open

Budget for past 3 years

The figures below are for the Compliance activities (i.e. Function) across the entire ICANN organization, which includes the Compliance department, as well as other areas of the organization that contribute to the Compliance activities.

FUNCTIONAL REPORT	FY ACTUAL	ANNUAL BUDGET	VARIANCE
FY09 - Compliance	2,335,170	2,457,013	121,843
FY10 - Compliance	3,614,166	3,155,441	(458,725)
FY11 - Compliance	3,218,475	3,399,113	180,638

From: Emily Taylor <xxxxxxxxxxxx>
Date: Saturday, April 21, 2012 11:22 AM
To: Denise Michel <xxxxxxxxxxxx>
Cc: "rt4-whois@icann.org" <xxxxxxxxxxxx>
Subject: Re: [Rt4-whois] Additional information on Compliance staffing and budget

Thank you Denise, and please pass on thanks to your colleagues for producing this information at what I'm sure is a busy and difficult time for you all.

No doubt my colleagues may have further questions, but one think I can immediately see we need is more information on budget. Please can you elaborate on what is meant by "other areas of the organisation that contribute to the compliance activities", and provide us with details about how these contributions are calculated, and figures to support. Although I'm familiar with the idea of contribution costing, I'm also accustomed (when looking at budgeting for an area of business) to look at a breakdown of costs eg staff, operational costs associated with the compliance activities, and other costs (eg for suppliers, IT systems, events, whatever). Could we have these please, and also the actuals.

Thanks

Emily

From: Denise Michel <xxxxxxxxxxxx>
Reply-To: Denise Michel <xxxxxxxxxxxx>
Date: Wednesday, April 25, 2012 10:58 PM
To: Emily Taylor <xxxxxxxxxxxx>
Cc: "rt4-whois@icann.org" <xxxxxxxxxxxx>
Subject: Re: [Rt4-whois] Additional information on Compliance staffing and budget

Dear Emily and Team members,

The budget and actual figures provided last week include 100% of the Compliance Team and small fractions of other departments, such as Legal, Registrar, Registry and Operations Teams. This reflects Compliance-related activities supported by these groups during the past three fiscal years. Other departments, such as IT, HR, etc., provide support to Compliance but fractions of these departments are not included in the Compliance budget. Each fiscal year's budget for Compliance includes broad funding categories for personnel, travel, professional services, administration, and overhead.

I trust this level of detail meets the Team's need to address the overall level of resources for Compliance. Please let me know if you have questions or require anything further.

Regards,

Denise

Denise Michel

ICANN

Advisor to the President & CEO

FY11 Compliance Activities Report (Addendum – 24 May 2012)

From: **Denise Michel** <xxxxxxxxxxxx>

Date: 8 May 2012 20:04

Subject: Additional budget details

To: Emily Taylor <xxxxxxxxxxxx>

Hi, Emily.

My apologies for the delay on these additional numbers. Attached is the FY11 Functional Report for the Compliance activities. The report includes aggregate numbers for the major expense categories we discussed -- Personnel, Travel, Professional Services and Administration. The report shows data for the FY11 Actual, the FY11 Budget, and the variance between the two. Note that approximately 5-10% of the following department budgets are used for compliance-related activities and are reflected in the attached as "Other dept. allocation": Operations, IT, Legal, Registrar, Registry, Overhead.

If you have any question please let me know.

Regards,

Denise

FY11 Functional Report - Compliance Activities

FY11 Actual	Personnel	Travel	Prof Serv	Admin	Total
100% Compliance dept.	1,035,993	148,964	198,202	13,200	1,396,359
Other dept. allocation	639,090	55,509	358,624	136,777	1,190,000
Overhead	231,120	74,796	147,722	178,478	632,116
Total	1,906,203	279,269	704,548	328,455	3,218,475

FY11 Budget	Personnel	Travel	Prof Serv	Admin	Total
100% Compliance dept.	1,159,000	126,100	466,800	48,465	1,800,365
Other dept. allocation	445,170	54,090	368,489	107,277	975,026
Overhead	205,017	73,100	166,347	179,258	623,722
Total	1,809,187	253,290	1,001,636	335,000	3,399,113

Variance Act/Bud	Personnel	Travel	Prof Serv	Admin	Total
100% Compliance dept.	(123,007)	22,864	(268,598)	(35,265)	(404,006)
Other dept. allocation	193,920	1,419	(9,865)	29,500	214,974
Overhead	26,103	1,696	(18,625)	(780)	8,394
Total	97,016	25,979	(297,088)	(6,545)	(180,638)

Appendix C:

Correspondence between Federal Trade Commission and ICANN



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 16, 2011

Dr. Stephen D. Crocker
Chairman of the Board of Directors
Internet Corporation for Assigned Names and Numbers
1101 New York Avenue N.W.
Suite 930
Washington, D.C. 20005

Rod Beckstrom
President and CEO
Internet Corporation for Assigned Names and Numbers
325 Lytton Avenue, Suite 300
Palo Alto, California 94301

Re: Consumer Protection Concerns Regarding New gTLDs

Dear Dr. Crocker and Mr. Beckstrom:

We write in reference to the Internet Corporation for Assigned Names and Numbers' (ICANN) plan to open the application period for new generic top-level domains (new gTLDs) on January 12, 2012. As you know, the Federal Trade Commission ("FTC" or "Commission") expressed concerns about the need for more consumer protection safeguards during the Board's consideration of the gTLD program's expansion. The FTC has also long urged for the improvement of ICANN policies that affect consumers engaged in e-commerce or that frustrate law enforcement efforts to identify and locate bad actors.

We write now to highlight again the potential for significant consumer harm resulting from the unprecedented increase in new gTLDs. Before approving any new gTLD applications, we urge ICANN to take the steps described below to mitigate the risk of serious consumer injury and to improve the accuracy of Whois data.

We also urge ICANN to take immediate steps to address the FTC's and the Governmental Advisory Committee's (GAC) longstanding concerns with various ICANN policies and procedures. The exponential expansion of the number of gTLDs will only increase the challenge of developing and implementing solutions to the problems the FTC and the GAC have previously brought to ICANN's attention. In the Affirmation of Commitments, ICANN pledged to ensure that various issues involved in the expansion of the gTLD space—including consumer protection and malicious abuse issues—would "be adequately addressed prior to

implementation.”¹ We look forward to working with ICANN as it honors these commitments to ensure that the new gTLD program benefits both consumers and businesses alike.

1. Federal Trade Commission

The FTC is an independent agency of the United States government that enforces competition and consumer protection laws.² The FTC fulfills its consumer protection mission in a variety of ways—through civil enforcement actions, policy development, rulemaking, and consumer and business education.

The principal consumer protection statute that the FTC enforces is the FTC Act, which prohibits “unfair or deceptive acts or practices.”³ The FTC has used its authority to take action against a wide variety of Internet-related threats, including bringing a substantial number of cases involving online consumer fraud and almost 100 spam and spyware cases.⁴ In addition, the FTC has made a high priority of protecting consumers’ privacy and improving the security of their sensitive personal information, both online and offline.⁵

¹ See Affirmation of Commitments, at 9.3, available at <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>.

² The Commission is headed by five Commissioners, nominated by the President and confirmed by the Senate, each serving a seven-year term. The President chooses one Commissioner to act as Chairman. No more than three Commissioners can be of the same political party.

³ See 15 U.S.C. § 45. The FTC also enforces several other consumer protection statutes. See, e.g., Restore Online Shopper’s Confidence Act, Pub. L. 111-345, 124 Stat. 3618 (2010); Children’s Online Privacy Protection Act, 15 U.S.C. §§ 6501-6506; CAN-SPAM Act, 15 U.S.C. § 7701-7713; Truth in Lending Act, 15 U.S.C. §§ 1601-1667f; Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681u; Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692o; Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108.

⁴ See, e.g., *FTC v. Flora*, No. SACV11-00299-AG-(JEMx) (C.D. Cal., filed Feb. 22, 2011), press release available at <http://www.ftc.gov/opa/2011/02/loan.shtm>; *FTC v. Johnson*, No. 2:10-cv-02203 (D. Nev., filed Dec. 21, 2010), press release available at <http://www.ftc.gov/opa/2011/01/iworks.shtm>; *FTC v. Infusion Media, Inc.*, No. 09-CV-01112 (D. Nev., filed June 22, 2009), press release available at <http://www.ftc.gov/opa/2010/10/googlemoney.shtm>; *FTC v. Pricewert LLC*, No. 09-CV-2407 (N.D. Cal., filed June 1, 2009), press release available at <http://www.ftc.gov/opa/2010/05/perm.shtm>; *FTC v. Innovative Mktg., Inc.*, No. 08-CV-3233-RDB (D. Md., filed Dec. 2, 2008), press release available at <http://www.ftc.gov/opa/2011/01/winsoftware.shtm>; *FTC v. CyberSpy Software, LLC*, No. 08-CV-0187 (M.D. Fla., filed Nov. 5, 2008), press release available at <http://www.ftc.gov/opa/2008/11/cyberspy.shtm>; *FTC v. Spear Sys., Inc.*, No. 07C-5597 (N.D. Ill., filed Oct. 3, 2007), press release available at <http://www.ftc.gov/opa/2009/07/spear.shtm>; *FTC v. ERG Ventures, LLC*, No. 3:06-CV-00578-LRH-VPC (D. Nev., filed Oct. 30, 2006), press release available at <http://www.ftc.gov/opa/2006/11/mediamotor.shtm>; *FTC v. Enternet Media*, No. CV 05-7777 CAS (C.D. Cal., filed Nov. 1, 2005), press release available at <http://www.ftc.gov/opa/2006/09/enternet.shtm>; *FTC v. Cleverlink Trading Ltd*, No. 05C 2889 (N.D. Ill., filed May 16, 2005), press release available at <http://www.ftc.gov/opa/2006/09/spammers.shtm>.

2. Federal Trade Commission Investigations

Our ability to protect consumers in cases involving unfair or deceptive practices online often depends on navigating an environment in which scam artists easily manipulate the domain name system to evade detection. We routinely consult Whois services in Internet investigations to identify website operators. However, the Whois information often contains incomplete or inaccurate data or, increasingly, proxy registrations, which shield the contact information for the underlying domain name registrant. To give just one example, in a case against illegal spammers promoting pornography websites, false Whois data slowed down our ability to identify and locate the individuals behind the operation,⁶ requiring the FTC investigators to spend additional time consulting multiple other sources. In other instances, we have encountered Whois information with facially false address and contact information, including websites registered to “God,” “Bill Clinton,” and “Mickey Mouse.”⁷ In Internet investigations, identifying domain name registrants immediately is especially important, as fraudsters often change sites frequently to evade detection.

The FTC has highlighted these concerns about Whois with ICANN and other stakeholders for more than a decade.⁸ In particular, we have testified before Congress on Whois

⁵ See, e.g., *In the Matter of Facebook, Inc.*, FTC File No. 092-3184 (proposed settlement posted for public comment on Nov. 29, 2011), *press release available at* <http://www.ftc.gov/opa/2011/11/privacysettlement.shtm>; *In the Matter of ScanScout, Inc.*, FTC File No. 102-3185 (proposed settlement posted for public comment on Nov. 8, 2011), *press release available at* <http://www.ftc.gov/opa/2011/11/scanscout.shtm>; *In the Matter of Google, Inc.*, FTC Docket No. C-4336 (Oct. 13, 2011), *press release available at* <http://www.ftc.gov/opa/2011/10/buzz.shtm>; *U.S. v. W3 Innovations, LLC*, No. CV-11-03958-PSG (N.D. Cal., filed Aug. 12, 2011), *press release available at* <http://www.ftc.gov/opa/2011/08/w3mobileapps.shtm>; *U.S. v. Teletrack, Inc.*, No. 1:11-CV-2060 (filed June 24, 2011), *press release available at* <http://www.ftc.gov/opa/2011/06/teletrack.shtm>; *In the Matter of Lookout Servs., Inc.*, FTC Docket NO. C-4326 (June 15, 2011), *press release available at* <http://www.ftc.gov/opa/2011/05/ceridianlookout.shtm>; *In the Matter of Ceridian Corp.*, FTC Docket No. C-4325 (June 8, 2011), *press release available at* <http://www.ftc.gov/opa/2011/05/ceridianlookout.shtm>; *In the Matter of Twitter, Inc.*, FTC Docket NO. C-4316 (Mar. 2, 2011), *press release available at* <http://www.ftc.gov/opa/2011/03/twitter.shtm>.

⁶ See *FTC v. Global Net Solutions, Inc.*, No. CV-S-05-0002-PMP (LRL) (D. Nev., filed Jan. 3, 2005), *press release available at* <http://www.ftc.gov/opa/2005/11/globalnet.shtm>.

⁷ See *Hearing on the Accuracy and Integrity of the Whois Database Before the Subcomm. on Courts, the Internet, and Intellectual Prop. of the House Comm. on the Judiciary*, 107th Cong. (2002) (Prepared Statement of the Federal Trade Commission, presented by Howard Beales).

⁸ See Letter from Comm’r Jon Leibowitz to Peter Dengate Thrush, (former) Chairman, ICANN Board of Directors, Dr. Paul Twomey, (former) President and CEO, ICANN, and Jonathan Nevett, (former) Chair, Registrar Constituency (Feb. 8, 2008) [hereinafter “Whois and RAA Letter”]; *Hearing on Internet Governance: The Future of ICANN Before the Subcomm. on Trade, Tourism, and Econ. Dev. of the Senate Committee on Commerce, Science, and Transp.*, 109th Cong. (2006) (Prepared Statement of the Federal Trade Commission, presented by Comm’r Leibowitz), *available at* <http://www.ftc.gov/os/testimony/P035302igovernancefutureicanncommissiontestsenate09202006.pdf>; *Hearing on ICANN and the Whois Database: Providing Access to Protect Consumers from Phishing*

information several times, issued a Commission statement on Whois services, delivered presentations to the GAC, participated as a panelist in joint sessions organized by the GAC and the Generic Names Supporting Organization (GNSO), provided briefings to the ICANN Board, and worked directly with a wide range of stakeholders to develop pragmatic solutions to this difficult problem.

The FTC has not been alone in highlighting the importance of this issue or in its effort to urge ICANN to develop effective solutions to Whois problems. In 2003, the Organization for Economic Co-operation and Development's Committee on Consumer Policy issued a policy paper unequivocally stating that for commercial registrants, all contact data "should be accurate and publicly available via Whois."⁹ In 2007, the GAC issued policy principles urging ICANN stakeholders to "improve the accuracy of Whois data, and in particular, to reduce the incidence of deliberately false Whois data."¹⁰ In 2009, global law enforcement agencies, led by the U.S. Federal Bureau of Investigation and the UK Serious Organized Crime Agency, issued a set of law enforcement recommendations to improve a wide range of ICANN policies, including the accuracy of Whois data. In October 2011, the GAC reiterated its previous requests for the Board to address the law enforcement recommendations.¹¹ Last week, ICANN's own Whois Review Team issued its draft report, acknowledging the "very real truth that the current system is broken

Before the Subcomm. on Fin. Institutions and Consumer Credit of the House Comm. on Fin. Servs., 109th Cong. (2006) (Prepared Statement of the Federal Trade Commission, presented by Eileen Harrington), available at <http://www.ftc.gov/os/2006/07/P035302PublicAccessstoWHOISDatabasesTestimonyHouse.pdf>; FTC, Prepared Statement of the Federal Trade Commission before the ICANN Meeting Concerning Whois Databases (June 2006); Letter from Comm'r Jon Leibowitz to Dr. Paul Twomey, (former) President and CEO, ICANN (Feb. 9, 2005); *Hearing on the Accuracy and Integrity of the Whois Database Before the Subcomm. on Courts, the Internet, and Intellectual Prop. of the House Comm. on the Judiciary*, 107th Cong. (2002) (Prepared Statement of the Federal Trade Commission, presented by Howard Beales); and Comment of the Staff of the FTC Bureau of Consumer Protection before the ICANN Public Comment Forum, In the Matter of Tentative Agreements among ICANN, U.S. Dep't of Commerce, and Network Solutions, Inc. (Oct. 29, 1999).

⁹ OECD, *Consumer Policy Considerations on the Importance of Accurate and Available Whois Data*, at 8 (June 2, 2003), available at [http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=dsti/cp\(2003\)1/final&doclanguage=en](http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=dsti/cp(2003)1/final&doclanguage=en).

¹⁰ Governmental Advisory Committee, GAC Principles Regarding gTLD Whois Services, at 4.1 (Mar. 28, 2007), available at https://gacweb.icann.org/download/attachments/1540132/WHOIS_principles.pdf?version=1&modificationDate=1312460331000.

¹¹ See Governmental Advisory Committee, GAC Communiqué-Dakar, at III (Oct. 27, 2011), available at <https://gacweb.icann.org/download/attachments/4816912/Communique+Dakar+-+27+October+2011.pdf?version=1&modificationDate=1319796551000>.

and needs to be repaired.”¹² ICANN has failed to adequately address this problem for over a decade.

A rapid, exponential expansion of gTLDs has the potential to magnify both the abuse of the domain name system and the corresponding challenges we encounter in tracking down Internet fraudsters. In particular, the proliferation of existing scams, such as phishing, is likely to become a serious challenge given the infinite opportunities that scam artists will now have at their fingertips. Fraudsters will be able to register misspellings of businesses, including financial institutions, in each of the new gTLDs, create copycat websites, and obtain sensitive consumer data with relative ease before shutting down the site and launching a new one. The potential for consumer confusion in other variations of these types of scams is significant. As an example, “ABC bank” could be registered in .com, but another entity could register “ABC” in a new .bank gTLD, and a different entity could register “ABC” in a new .finance gTLD. Scam artists could easily take advantage of this potential for confusion to defraud consumers.

In addition, the number of individuals with access to the Internet infrastructure will substantially increase. This creates an increased possibility that malefactors, or others who lack the interest or capacity to comply with contractual obligations, will operate registries. It is inevitable that malefactors may still pass a background screening due to inadequate or incomplete records. Or, malefactors could use straw men to assist them and be the party “on record” with ICANN. Either way, a registry operated by a bad actor would be a haven for malicious conduct. As discussed below, ICANN’s contractual compliance office has encountered tremendous challenges trying to secure compliance under the current framework, and the unprecedented increase in domain registries only increases the risk of a lawless frontier in which bad actors violate contractual provisions with impunity, resulting in practices that ultimately harm consumers. The gTLD expansion will also increase the number of entities in foreign jurisdictions with relevant data on registrants. This will likely cause further delays in obtaining registrant data in investigations of global fraud schemes. In short, the potential for consumer harm is great, and ICANN has the responsibility both to assess and mitigate these risks.¹³

¹² See Whois Review Team, Final Report (Draft), at 5 (Dec. 5, 2011), *available at* <http://www.icann.org/en/reviews/affirmation/whois-rt-draft-final-report-05dec11-en.pdf>.

¹³ As the U.S. government, the GAC, and several other stakeholders have urged, ICANN should conduct a more thorough economic study to assess the costs and benefits of introducing a significant number of new gTLDs. See Letter from Assistant Secretary Strickling to Rod Beckstrom, President and CEO, ICANN (Dec. 2, 2010), *available at* <http://forum.icann.org/lists/5gtld-guide/pdf3Ep9MhQVGO.pdf>; Governmental Advisory Committee, GAC Communiqué—Cartagena, at 5 (Dec. 9, 2010), *available at* https://gacweb.icann.org/download/attachments/1540144/GAC_39_Cartagena_Communique.pdf?version=1&modificationDate=1312225168000; Letter from Janis Karklins, (former) Chairman, Governmental Advisory Committee to Peter Dengate Thrush, (former) Chairman, ICANN Board of Directors (Aug. 18, 2009), *available at* <http://www.icann.org/en/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf> (“The GAC remains concerned that the threshold question has not been answered whether the introduction of new gTLDs provides potential benefits to consumers that will not be outweighed by the potential harms.”).

3. Recommended Changes to the New gTLD Program

In light of the dramatically increased opportunity for consumer fraud, distribution of malware, and proliferation of other malicious activity, it is critical that ICANN take immediate steps to ensure that consumer protection is not compromised by the introduction of new gTLDs. Accordingly, we urge ICANN to: (1) implement the new gTLD program as a pilot program and substantially reduce the number of gTLDs that are introduced in the first application round, (2) strengthen ICANN's contractual compliance program, in particular by hiring additional compliance staff, (3) develop a new ongoing program to monitor consumer issues that arise during the first round of implementing the new gTLD program, (4) conduct an assessment of each new proposed gTLD's risk of consumer harm as part of the evaluation and approval process, and (5) improve the accuracy of Whois data, including by imposing a registrant verification requirement. We strongly believe that ICANN should address these issues before it approves any new gTLD applications. If ICANN fails to address these issues responsibly, the introduction of new gTLDs could pose a significant threat to consumers and undermine consumer confidence in the Internet.¹⁴

As you know, the GAC and several other stakeholders in the ICANN Community urged the Board to revise the gTLD applicant guidebook, which sets forth the new gTLD evaluation and approval process. Stakeholders urged ICANN to address the potential for malicious conduct and implement certain consumer protection safeguards before authorizing the launch of the new gTLD program.¹⁵ Although changes were made to the guidebook to include some safeguards,

¹⁴ We are aware that a wide range of stakeholders has expressed concern about potential conflicts of interest on the ICANN Board. *See, e.g.,* Eric Engleman, *ICANN Departures After Web Suffix Vote Draw Criticism*, Wash. Post, August 20, 2011, available at http://www.washingtonpost.com/business/icann-departures-draw-criticism/2011/08/19/gIQAzpeDTJ_story_1.html. According to these critics, several members of the Board have affiliations with entities that have a financial stake in the expansion of new gTLDs. *See* Esther Dyson, *What's in a Domain Name?* (Aug. 25, 2011), <http://globalpublicsquare.blogs.cnn.com/2011/08/25/whats-in-a-domain-name/>.

In light of the potential for the appearance of impropriety to exist, we believe that ICANN should promote transparency, accountability, and confidence in its decision-making processes by developing a more comprehensive conflict of interest and ethics policy that prevents individuals with actual and potential conflicts of interest from participating in the deliberations and decisions for which the conflict exists or which raise an appearance of impropriety. We are aware of the Board's ongoing effort to review and revise its current conflict of interest policies. *See* Board Member Rules on Conflicts of Interest for New gTLDs (Dec. 8, 2011), <http://www.icann.org/en/minutes/resolutions-08dec11-en.htm#4>. The implementation of a more robust and comprehensive conflict of interest policy is especially important in light of the public interests that ICANN is charged with protecting, and the substantial impact the Board's decisions has on consumers operating in the online world. Accordingly, we encourage ICANN to complete the ongoing reviews of its conflict of interest and ethics practices and implement a revised Board conflict of interest policy before approving any new gTLD applications.

¹⁵ These safeguards included imposing an obligation on new gTLD registry operators to respond to law enforcement requests; maintaining a requirement that new gTLD registry operators maintain a "thick" Whois service; expanding the categories of criminal offenses screened during the vetting process, which could serve as a basis for disqualifying new gTLD applicants; adding civil consumer protection decisions

ICANN failed to respond effectively to all of the concerns that were raised, did not implement some of its commitments to improve the new gTLD program, and did not provide adequate solutions to widely documented problems in the existing gTLD marketplace. Indeed, despite offering some protections, the safeguards now in place do not provide comprehensive solutions to the problems likely to arise as a result of the introduction of new gTLDs. For example, while registries will be required to maintain “thick” Whois services, the lack of meaningful obligations to ensure Whois accuracy, such as registrant verification, still hampers the ability of law enforcement agencies to track down Internet fraudsters quickly. We recognize that ICANN has taken some of the GAC’s concerns into account, but we urge ICANN to do more to protect consumers and adequately address law enforcement concerns.

A. Implement New gTLDs as a Pilot Program

Despite the modest improvements to the new gTLD program, overarching consumer protection concerns persist. As an initial matter, the potential number of expected new gTLDs is itself a serious challenge. The initial estimate for expected applications was 500, but recent estimates have suggested that there could be more than 1500 applications. If the number of approved new gTLDs reaches even the minimum estimate, the Internet landscape will change dramatically. Indeed, an increase from 22 existing gTLDs to 500 gTLDs would be an unprecedented expansion of the domain name system. Among other things, the number of registered websites is likely to increase exponentially, the number of registry operators and other actors with an operational role in the Internet ecosystem will expand, and the ability to locate and identify bad actors will be frustrated significantly due to a likely increase in the number of registries located in different countries and limited ability to obtain relevant data maintained abroad.

We understand that ICANN is currently considering batching applications in the event that the number of new gTLD applications exceeds initial expectations, and that it has set a maximum of 1,000 gTLDs to be introduced per year. We strongly believe that ICANN should substantially reduce the maximum number of new gTLDs that could be introduced in the initial round to a much smaller number. Indeed, doubling the number of existing gTLDs in one year would be an aggressive increase. The imposition of a more reasonable limit is necessary to curb

to the background screening process; publicly disclosing the names of the principal officers associated with the new gTLD application; and adding an extra point in the scoring criteria for applicants that include measures to promote Whois accuracy.

The U.S. Department of Commerce’s National Telecommunications and Information Administration, which serves as the U.S. representative to the GAC, contributed significantly to the GAC’s efforts to enhance protections for consumers and implement recommendations from law enforcement agencies. FTC staff provided input on these issues both as part of the U.S. delegation to the GAC and directly to ICANN. The Department of Commerce has worked extensively to enhance ICANN’s accountability and ensure that ICANN develops consensus-based policies in a fair, open, and transparent manner. We believe that ICANN represents an important multi-stakeholder model for Internet governance, which has been critical to keeping the Internet open and innovative, and we encourage ICANN to enhance its efficacy by implementing comprehensive solutions to these consumer protection issues.

the risks inherent in expanding the number of gTLDs, including the proliferation of malicious conduct. We recommend that ICANN use this round as a limited pilot program, as it has done in previous rounds, assess the organization's ability to evaluate, introduce, and manage additional gTLDs, conduct an assessment of the increased risks posed by the program, and then consider whether a more significant expansion would be appropriate.

B. Strengthen ICANN's Contractual Compliance Program

Currently, ICANN is ill-equipped to handle the contract enforcement for the 22 existing gTLDs and several hundred accredited registrars. In particular, ICANN lacks an adequate number of compliance staff, has failed to close contractual loopholes that limit the existing compliance staff's ability to take action against registrars and registries, and needs to implement a more rigorous enforcement program.¹⁶ The likely effect of introducing large numbers of new gTLDs is that it will significantly increase the number of entities that operate pursuant to registry contracts with ICANN. In addition, the number of registered domain names will increase as Internet users begin to register domains in new gTLDs. This will likely increase the number of complaints the compliance office receives, including those related to Whois data accuracy. Thus, the expansion of the gTLD space will require a substantial increase in resources devoted to contract enforcement and improvement of policies that hold both registries and registrars accountable.

During the GAC-Board consultations earlier this year, the Board announced its commitment to augment ICANN's contractual compliance function with additional resources. The GAC, in unambiguous terms, emphasized that a "strengthened contract compliance function must be in place prior to the launch of new gTLDs."¹⁷ Specifically, the GAC highlighted the

¹⁶ In the registrar context, despite its knowledge of proposed law enforcement recommendations to amend the Registrar Accreditation Agreement that were presented in October 2009, the Board only recently took action to ensure that these concerns would be addressed in contractual negotiations between the Board and the registrars. See <http://www.icann.org/en/minutes/resolutions-28oct11-en.htm#7>.

¹⁷ See GAC comments on the ICANN Board's response to the GAC Scorecard, at 9 (Apr. 12, 2011), available at <http://www.icann.org/en/topics/new-gtlds/gac-comments-board-response-gac-scorecard-12apr11-en.pdf>. The GAC stated:

The GAC appreciates the Board's agreement to strengthen ICANN's contractual compliance function. The GAC respectfully requests ICANN, in the coming weeks, to identify the amount of personnel it intends to hire to support the compliance function and the timeline for hiring. In particular, the GAC would like to know how many staff ICANN intends to have in place prior to the expected launch of new gTLDs. As ICANN adds new resources to its compliance program, the GAC encourages ICANN to ensure that it is staffed globally, perhaps using regional compliance officers consistent with the five RIR regions. The GAC believes that a robust compliance program is necessary to enforce registry and registrar contracts and that a strengthened contract compliance function must be in place prior to the launch of new gTLDs.

Id. (emphasis added).

need to hire enough staff to address contractual compliance issues for hundreds of new registry contracts. However, contrary to the Board’s commitment, ICANN has not yet hired additional compliance staff to support the registry contract support program. It is also unclear whether ICANN has taken any other steps to improve its contract enforcement program, and whether those steps are adequate to handle the myriad issues that will arise with such a dramatic increase in the number of registries. In FY12, ICANN budgeted only a 25 percent increase for all contractual compliance resources, despite the likelihood that the number of new gTLD contracts could increase in 2013 by over 2000 percent.¹⁸ Further, the total expected staffing level for contractual compliance in FY12 is equal to the staffing level in FY10,¹⁹ lacking the substantial increase necessary to respond to additional compliance issues resulting from the introduction of new gTLDs. Notably, ICANN’s own Whois Review Team has highlighted the lack of compliance resources available to address existing gTLD contractual concerns, recommending that ICANN should allocate “sufficient resources, through the budget process, to ensure that ICANN compliance staff is fully resourced to take a proactive regulatory role and encourage a culture of compliance.”²⁰

In addition to adequately staffing its contractual compliance program, ICANN should strengthen its contracts to ensure that registries and registrars are obligated to adhere to stringent policies that promote consumer trust and enhance security. In particular, these contracts should require verification of domain name registrants, impose further obligations on registrars for maintaining accurate Whois data, and hold domain name resellers accountable. ICANN should also ensure that the contracts provide adequate sanctions for noncompliance. In 2008, then-FTC Commissioner Leibowitz highlighted in his letter to ICANN that: “The FTC frequently has observed that transparent enforcement mechanisms are an essential element of effective private sector self-regulation and that there must be *meaningful consequences* for noncompliance.”²¹ ICANN’s Whois Review Team recently advocated for a similar approach, recommending in its draft final report that “ICANN should ensure that clear, enforceable and graduated sanctions apply to registries, registrars and registrants that do not comply with its Whois policies.”²² Significantly, ICANN must also ensure that its compliance team vigorously enforces these contracts.

¹⁸ See ICANN FY12 Operating Plan and Budget Fiscal Year Ending 30 June 2012, at 14, available at <http://www.icann.org/en/financials/adopted-opplan-budget-fy12-09sep11-en.pdf>.

¹⁹ *Id.* at 45.

²⁰ See Whois Review Team, Final Report (Draft), at 9 (Dec. 5, 2011), available at <http://www.icann.org/en/reviews/affirmation/whois-rt-draft-final-report-05dec11-en.pdf>.

²¹ See Whois and RAA Letter, *supra* note 5, at 5 (emphasis in original). The letter addressed issues relating to registrar contracts, which were amended in 2009 to provide some intermediate sanctions, but the principle applies equally to registry contracts.

²² See Whois Review Team, Final Report (Draft), at 9 (Dec. 5, 2011), available at <http://www.icann.org/en/reviews/affirmation/whois-rt-draft-final-report-05dec11-en.pdf>.

As the GAC and other stakeholders have emphasized, ICANN must adequately strengthen its contractual compliance program before it approves any new gTLD applications to ensure that consumers' interests are protected and the commitments made by gTLD registries are enforced.

C. Develop Program to Monitor Consumer Issues During New gTLD Implementation

Further, in light of the substantial impact the introduction of new gTLDs will likely have on consumers, the investment of additional resources into the contractual compliance program is really just the first step in developing an overall more effective approach. To address the issue in a comprehensive manner, we recommend that ICANN create a new program under its compliance framework that monitors consumer issues arising during the implementation of the new gTLD program, reviews the feasibility of existing mechanisms for addressing consumer issues, applies current contractual enforcement tools to resolve these issues, identifies areas where new policies may be needed, and outlines a plan for working with ICANN's supporting organizations on policy development processes that address these issues. We are aware that the compliance office has operated a C-Ticket System that captures and tracks complaints, many of which relate to consumer issues, and that ICANN follows up on complaints that fall within its purview. However, we believe that ICANN should supplement this work, and that the Board should provide more direction by approaching consumer issues more systematically and developing a dedicated program that is well resourced and that proactively addresses these issues.

ICANN should act now to ensure that consumer interests are protected in the gTLD implementation process. We understand that, pursuant to the Affirmation of Commitments, ICANN will conduct a review of the new gTLD program one year after it has been in operation, followed by subsequent reviews, and that the issue of consumer trust and consumer choice will be a key focus of that review.²³ We intend to participate actively in this review process.²⁴

²³ See Affirmation of Commitments, available at <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>. The Affirmation of Commitments states, in relevant part:

9.3 Promoting competition, consumer trust, and consumer choice: ICANN will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation. If and when new gTLDs (whether in ASCII or other language character sets) have been in operation for one year, ICANN will organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion. ICANN will organize a further review of its execution of the above commitments two years after the first review, and then no less frequently than every four years.

Id.

However, in advance of the competition, consumer trust, and consumer choice review, ICANN should create a program that monitors and addresses consumer issues on an ongoing basis to ensure that the potential for consumer harm resulting from the introduction of new gTLDs is addressed effectively and timely.

D. Evaluate Proposed gTLDs' Potential Harm to Consumers

Attention to consumer issues should not be relegated to an external review process but rather function as an integral part of the new gTLD evaluation process. During the GAC-Board new gTLD consultations, the GAC recommended that proposed gTLDs implicating regulated industries or gTLDs that were otherwise particularly susceptible to abuse (e.g., .kids, .bank) should receive additional vetting and scrutiny. The Board rejected this proposal and did not provide an alternative that adequately addresses this concern.²⁵ ICANN should conduct its own evaluation of the potential consumer risks associated with each proposed new gTLD, especially those that will inherently raise heightened concern among stakeholders. Accordingly, we urge ICANN to reconsider its decision not to apply additional vetting or scrutiny to proposed gTLDs associated with regulated industries or gTLDs that are particularly susceptible to abuse and pose an increased risk of consumer fraud, or to otherwise incorporate the risk of consumer harm into the evaluation process for each proposed gTLD.

E. Improve Whois Accuracy

As we have advocated for more than a decade, and as discussed earlier in this letter, ICANN should improve the accuracy of Whois data.²⁶ A wide range of stakeholders has strongly urged ICANN to address this problem, including the GAC, which noted in its 2007

²⁴ We are aware that a cross-constituency working group has been formed to address preliminary matters related to this review. We are also aware that ICANN will be reviewing aspects of new gTLD implementation as a result of concerns raised by the GAC.

²⁵ The Board supplemented the evaluation and approval process with a GAC early warning mechanism, which allows individual governments to notify applicants via the GAC that they have concerns about a proposed gTLD, as well as preserving the ability of the GAC to provide consensus advice on a particular application. Certainly, these mechanisms allow governments an important opportunity to communicate their views about proposed gTLDs, but they do not obviate the need for ICANN to conduct its own assessment of potential consumer harm during the evaluation process.

²⁶ *See supra* note 8. We recognize, as we have done in the past, that ICANN's Whois policies should protect the privacy of individual registrants. *See* FTC, Prepared Statement of the Federal Trade Commission before the ICANN Meeting Concerning Whois Databases, at 9 (June 2006) ("The FTC, as the primary enforcement agency for U.S. consumer privacy and data security laws, is very concerned about protecting consumers' privacy. Thus, the Commission has always recognized that non-commercial registrants may require some privacy protection from *public* access to their contact information, without compromising appropriate real-time access by law enforcement agencies.").

Whois principles, that “stakeholders should work to improve the accuracy of Whois data, and in particular, to reduce the incidence of deliberately false Whois data.”²⁷

The violations of Whois data accuracy requirements are pervasive, and ICANN’s response to this persistent problem has been woefully inadequate. As ICANN’s own Whois Review Team recognized,

Cyber security and cybercrime experts make extensive use of WHOIS to thwart and respond to a varied set of threats. Information contained within WHOIS is invaluable in these efforts and practitioners have conveyed to us their frustration at the continuing high levels of inaccuracy of WHOIS data. **We find that ICANN has neglected to respond to the needs of this community both in the accuracy of WHOIS data and in response times for access and action.**²⁸

We believe, as law enforcement agencies from around the world have advocated, that registrars should be required to implement verification procedures when registering domain names. Such efforts could significantly reduce the incidence of completely inaccurate data. In addition to imposing verification requirements, ICANN should adopt any other appropriate measures to reduce the amount of inaccurate Whois data.²⁹ We urge ICANN to develop and to implement a plan to address the problem of Whois inaccuracy before new gTLDs are introduced, which will likely exacerbate these problems.


In sum, the dramatic introduction of new gTLDs poses significant risks to consumers, and ICANN should take the steps described above to reduce the potential for consumer injury before approving any new gTLD applications. We look forward to working with ICANN to ensure that adequate consumer protection safeguards are implemented in the new—and existing—gTLD marketplace.

²⁷ See Governmental Advisory Committee, GAC Principles Regarding gTLD Whois Services, at 4.1 (Mar. 28, 2007), *available at* https://gacweb.icann.org/download/attachments/1540132/WHOIS_principles.pdf?version=1&modificationDate=1312460331000.

²⁸ See Whois Review Team, Final Report (Draft), at 7 (Dec. 5, 2011), *available at* <http://www.icann.org/en/reviews/affirmation/whois-rt-draft-final-report-05dec11-en.pdf> (emphasis added). In March, an Interpol representative delivered a blistering critique of the Whois system during ICANN’s Forum on DNS Abuse, noting that “Accurate WHOIS is a joke. It just doesn't happen. We don't see it. We never get it. Even if we do see something within it that might give us indications, it's -- it's always a dead end and it's a waste of time even trying. And for me, what's the point in having a WHOIS database if it can't be accurate? Somebody has to be responsible for having that accurate. Somebody has to be. I'm sorry. And whoever that “somebody” is, can you please step up to the plate and do your work?” See Transcript: Forum on DNS Abuse (Mar. 14, 2011), *available at* <http://svsf40.icann.org/node/22219>.

²⁹ See also Whois Review Team, Final Report (Draft), at 9 (Dec. 5, 2011), *available at* <http://www.icann.org/en/reviews/affirmation/whois-rt-draft-final-report-05dec11-en.pdf> (recommending that ICANN take appropriate measures to reduce the number of unreachable Whois registrations).


Sincerely,



Jon Leibowitz
Chairman



J. Thomas Rosch
Commissioner



Edith Ramirez
Commissioner



Julie Brill
Commissioner

cc: The Honorable John D. Rockefeller IV
Chairman, Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Kay Bailey Hutchison
Ranking Member, Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Fred Upton
Chairman, Committee on Energy and Commerce
United States House of Representatives

The Honorable Henry A. Waxman
Ranking Member
Committee on Energy and Commerce
United States House of Representatives

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
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The Honorable Charles E. Grassley
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The Honorable Lamar Smith
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The Honorable John Conyers, Jr.
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The Honorable G.K. Butterfield
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United States House of Representatives

The Honorable John Bryson
Secretary
United States Department of Commerce

The Honorable Lawrence E. Strickling
Assistant Secretary for Communications and Information and Administrator
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United States Department of Commerce



The Internet Corporation for Assigned Names and Numbers

10 January 2012

Chairman Jon Leibowitz
Commissioner J. Thomas Rosch
Commissioner Edith Ramirez
Commissioner Julie Brill
Federal Trade Commission
Washington, D.C. 20580

Re: ICANN's New gTLD Program

Dear Chairman Leibowitz and Commissioners Rosch, Ramirez and Brill:

Thank you for your letter of 16 December 2011 regarding ICANN's new generic top-level domain name program (New gTLD Program or Program). We appreciate the perspective that you provide to ICANN in your letter and note the important contributions that the FTC brings to ICANN's base of information and processes. That perspective has been and will continue to be important to us in performing ICANN's technical coordination role – especially in providing protections to consumers and users of the Internet.

The New gTLD Program is the product of ICANN's mandate to: act in the global public interest, coordinate the global Internet's systems of unique identifiers, and in particular, ensure the stable and secure operation of the Internet's unique identifier systems. ICANN has addressed the overarching issues identified for the rollout of new TLDs through careful operational planning and the six-year long, multistakeholder process to design the New gTLD Program.

The program has been designed to benefit the billions of Internet users around the globe through increased competition, choice and innovation. It is also designed to provide a safer, stable marketplace through the implementation of rights protection mechanisms, malicious conduct mitigation measures and other registrant protections.

New gTLDs Include Protections that Are Not Required in the 300 TLDs Already in the Domain Name System

The domain name system (DNS) today includes over 300 TLDs: 249 ccTLDs, 30 IDN ccTLDs, and 21 gTLDs. None of those 300 existing TLDs are required to include the standard protections that new TLDs must offer.

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The FTC's concerns about the expansion of the DNS and worldwide accessibility to the Internet¹ are actually mitigated through the launch of these new TLDs – rather than magnified as suggested in your letter.

ICANN strongly expects that TLDs approved through the New gTLD Program will bring about increased competition while resulting in more secure environments for consumers. New measures to mitigate malicious conduct and increase security and stability include:

- Background reviews of TLD applicants, including reviews for criminal history (including the use of telecommunications or the Internet to facilitate crimes, illegal sale of drugs, and others);
- Rejection of applications where the applicant has a pattern of adverse decisions under the UDRP (Uniform Domain Name Dispute Resolution Policy), or has been found to act in bad faith or reckless disregard under cybersquatting legislation;
- The requirement to have a plan to implement domain name system security extensions (DNSSEC), reducing the risk of “man-in-the-middle” attacks and spoofed DNS records;
- A requirement to maintain enhanced, or “thick”, WHOIS records at the registry level to allow more rapid search capabilities, facilitating efficient resolution of malicious conduct activities;
- A centralized zone file access system to allow for more accurate and rapid identification of key points of contact within each gTLD. This reduces the time necessary to take corrective action within TLDs experiencing malicious activity;

¹ To the extent that the FTC's concerns about the expansion of the DNS are in relation to phishing attacks, phishing attacks are predominately made through email. The number of attacks will not go up because there are more TLDs. Phishing attacks also require a domain name registration, but new, smaller TLDs incorporating the heightened protections are not the place for those making attacks to “hide.” Phishing attacks are proportional to the number of wrongdoers and registrants, not the number of TLDs.



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- A requirement to establish a single point of contact responsible for the handling of abuse complaints (as requested by law enforcement authorities);
- Requirements that New gTLD Registry Operators must:
 - Maintain a Continued Operations Instrument sufficient to fund basic registry operations for a period of three years in case of business failure, to protect consumers and registrants within that gTLD in the event of registry failure.
 - Maintain continuity and transition plans, including regular failover testing.
 - Cooperate with ICANN In the event transition to a new registry operator is necessary. ICANN will identify an Emergency Back-End Registry Operator to assist in the registry transition process and provide emergency registry services as needed.

The protections now in place are a result of substantive consultations across ICANN's stakeholders. The Governmental Advisory Committee (GAC), made up of over 110 of the world's governments, has been deeply involved in the development of the New gTLD Program. As noted by Assistant Secretary of Commerce Lawrence Strickling, ICANN worked with the GAC to be sure that government concerns were addressed in the program.²

ICANN's Work Does Not Stop With the January 12, 2012 Opening of The Application Window

ICANN's multistakeholder community will continue to work on issues identified by the FTC and others to enhance the security and stability of the DNS. Some examples of this work include:

² Remarks of Assistant Secretary Strickling at the Practising Law Institute's 29th Annual Telecommunications Policy & Regulation Conference, December 8, 2011, available at <http://www.ntia.doc.gov/speechtestimony/2011/remarks-assistant-secretary-strickling-practising-law-institutes-29th-annual-te>.



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- ICANN is currently in negotiations with its accredited registrars on amending the Registrar Accreditation Agreement (RAA) to meet the recommendations raised by law enforcement authorities. Amendments are expected to be in force prior to the entry of the first new TLD in 2013. The negotiation includes substantial and unprecedented steps to improve the accuracy of Whois data.
- The issue of improvements to Whois and Whois accuracy are under discussion in many areas of ICANN. As you know, there is tension in this area between those seeking access to data and privacy advocates.³ In addition to the work of the Whois Review Team arising out of the Affirmation of Commitments, there are five separate Whois-related studies underway, including issues on misuse, registrant identification and privacy/proxy services.⁴ There are also two active GNSO Working Groups on Whois-related issues.⁵
- The Contractual Compliance team is growing, and the ramp up in activities will meet the demands of the rollout of new gTLDs in 2013. ICANN's commitment in this area cannot be overstated.
- ICANN has committed to review the impacts of the rollout of the New gTLD Program in accordance with the Affirmation of Commitments, as well as undertaking a post-delegation economic study on the results of the first set of new gTLDs, and a post-launch study on the effectiveness of the new trademark protections and any effects on root zone operations.

Improvement of Whois Services and Data Is An Ongoing Focus

To reiterate, ICANN shares the FTC's concerns regarding Whois data. ICANN takes this very seriously. It is important to recall that the Whois system that exists today has been

³ A comprehensive listing of the past work regarding Whois is available at <http://gns0.icann.org/issues/whois/policies>. Substantial Whois work has been ongoing over the past ten years.

⁴ The Whois studies are identified at <http://gns0.icann.org/issues/whois/studies>.

⁵ Information on the work of Whois Service Requirements – Survey Drafting Group and the Internationalized Registration Data Working Group is available at <http://gns0.icann.org/issues/whois/policies>.



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hampered by an old prototype and little consensus on policy changes.⁶ The history of ICANN's work on this issue shows that Whois has been a constant challenge for the ICANN community. ICANN is actively working to enhance Whois. Improving the environment for law enforcement and consumers requires improving Whois accuracy and access to data.

As part of ICANN's negotiation with its accredited registrars on RAA amendments to meet law enforcement requests, ICANN is taking a strong stand in regard to issues relating to the verification of Whois data, and expects its accredited registrars to take action to meet the demands of FTC and law enforcement worldwide. ICANN expects that the RAA will incorporate – for the first time – Registrar commitments to verify Whois data. ICANN is actively considering incentives for Registrars to adopt the anticipated amendments to the RAA prior to the rollout of the first TLD in 2013.

ICANN has dedicated substantial resources to the study of Whois data-related issues. As discussed above, there are five separate studies currently underway regarding Whois services. These studies including issues on misuse, registrant identification and privacy/proxy services.⁷ Most of these studies are expected to conclude within 2012. This work is intended to inform, facilitate and expedite ongoing policy work within the GNSO on Whois data issues.

ICANN is committed to take action on the final recommendations of the Whois Review Team convened under the Affirmation of Commitments. The Review Team's draft recommendations are now the subject of a public comment proceeding.

ICANN's Whois Data Problem Reporting System has been significantly improved twice in recent years to: (1) assist registrars in carrying out their responsibility to investigate Whois data inaccuracy claims and (2) provide a better mechanism for tracking investigation and response.

⁶ A comprehensive listing of the past work regarding Whois is available at <http://gns0.icann.org/issues/whois/policies>.

⁷ The Whois studies are identified at <http://gns0.icann.org/issues/whois/studies>.



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In response to enforcement efforts, ICANN's accredited registrars are now at nearly 100% compliance with their obligation to send out Whois Data Reminders to their customers.

ICANN staff members have developed and recommended a solution for internationalized registration data (to ensure clarity of Whois information using characters other than English). That proposal is being considered for adoption as a standard by the Internet Engineering Task Force (IETF).

Finally, the New gTLD Program facilitates access to Whois related data. First the program requires maintenance of a "thick" Whois database for all new TLD registries. In addition, there is a strong incentive for applicants to implement "searchable" Whois. Both of these measures are recommended by intellectual property rights and domain name security experts to make more information about registrants more easily available – making it easier to combat malicious conduct where it occurs. In addition, the Program provides centralized access to registry data, creating for the first time a one-stop shop for accredited parties to view data in all registries. Internet security experts also recommended this improvement.

These examples above demonstrate that ICANN is responding to the calls from the FTC and law enforcement agencies around the world regarding Whois data, and ICANN will continue working with the community to implement additional enhancements as borne out through work, studies and further recommendations.

FTC's Proposed Improvements to the New gTLD Program

Along with the general call for improved Whois accuracy, the FTC identified four additional items for ICANN consideration prior to approving new gTLD applications. ICANN responds to the four items below.⁸

⁸ ICANN notes that the FTC calls for the implementation of a revised Board Conflicts of Interest Policy prior to approving any New gTLD Applications. ICANN is committed to completing its reviews of its Conflicts of Interest and ethical practices as expeditiously as possible. The Board Member Rules on Conflicts of Interest for New gTLDs, approved on 8 December 2011



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The FTC's recommended changes are largely based upon proposals that are not new. They have been made and considered through the six-year multistakeholder process. Many of the recommendations by law enforcement, consumer protection groups and intellectual property representatives were adopted and are part of the process. To the extent that the proposals were not incorporated into the Applicant Guidebook, that is a reflection of the multistakeholder process. That some protections were not adopted in full does not mean that ICANN "failed to respond effectively" to those concerns or warrant delay of the approval of new TLDs. As Assistant Secretary Strickling cautioned:

[W]e are now seeing parties that did not like the outcome of that multistakeholder process trying to collaterally attack the outcome and seek unilateral action by the U.S. government to overturn or delay the product of a six-year multistakeholder process that engaged folks from all over the world. **The multistakeholder process does not guarantee that everyone will be satisfied with the outcome. But it is critical to preserving the model of Internet governance that has been so successful to date that all parties respect and work through the process and accept the outcome once a decision is reached.** When parties ask us to overturn the outcomes of these processes, no matter how well intentioned the request, they are providing "ammunition" to other countries who attempt to justify their unilateral actions to deny their citizens the free flow of information on the Internet. This we will not do. There is too much at stake here. [Emphasis added.]

1. Pilot Programs Have Been Conducted On the Introduction of New TLDs

ICANN has demonstrated high competency in overseeing the coordination of today's DNS comprised of 300 TLDs.

(<http://www.icann.org/en/minutes/resolutions-08dec11-en.htm#4>) represents part of the gold standard that ICANN is working to establish in this area.



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ICANN has operated three pilot programs on the introduction of new TLDs into the DNS. In 2000, ICANN launched a “Proof of Concept” round, through which seven new TLDs were selected out of 44 applicants (proposing over 200 different potential TLDs). In 2004, ICANN accepted applications for Sponsored Top-Level Domains (sTLDs), specialized TLDs that are tied to defined sponsor communities (such as .CAT for the Catalan-speaking community). Finally, ICANN launched the IDN ccTLD Fast Track process in 2009 that, to date had resulted in the delegation of 30 IDN TLDs.

Through these pilot rounds, important lessons were learned. First, new TLDs can safely be added to the DNS. Second, the imposition of artificial restrictions on the rounds, such as the numerical restriction imposed in 2000 and the type-restriction imposed in 2004 place ICANN in the position of picking winners and losers, as opposed to fulfilling its mission of facilitating competition in the DNS. Artificial restrictions also create incentives for applicants to work to fit their TLD ideas into categories that may not be a true fit. The outcomes of the pilot rounds also helped inform the heightened protections in place for the New gTLD Program. The pilot programs informed the creation of independent dispute resolution programs that anticipate points of contention and provide paths for addressing potential abuses, controversies and sensitivities. The Fast Track program (and the IDN test bed before that) demonstrates that IDNs can be safely delegated into the root zone. These lessons learned will enable the realization of anticipated benefit in a safer environment.

The New gTLD Program will be implemented in a measured, limited manner. There is a 90-day application window, followed by a stringent evaluation process through which ICANN’s expert evaluation panels will evaluate registry abilities to meet the high technical and operational requirements. The rollout of new gTLDs will be distributed over time – no TLDs are expected to be operational prior to early 2013; delegations of additional TLDs will be distributed after that, as the applications pass through the evaluation and dispute resolution processes. The imposition of otherwise artificial limitations on today’s New gTLD Program would only create incentives for the bad-acting applicants to seek advantages in a subjective evaluation process. The Program in place today allows applicants to be evaluated against objective standards.



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2. ICANN's Contractual Compliance Function Is On Plan For Expansion

ICANN is committed to expanding its Contractual Compliance team in anticipation of the 2013 rollout of the first new TLDs, and has continued its expansion of the department to meet that commitment. ICANN has also grown the related functions and departments that support the contractual compliance function. In 2011, a new Senior Director was hired, as well as three full-time staff members.⁹ Active recruitment for three new positions is currently underway and the positions are posted on ICANN's career page.¹⁰ The Contractual Compliance team now has members staffed in multiple ICANN offices, with fluency in multiple languages. ICANN will continue to expand this function in the coming ICANN fiscal budget year. ICANN is actively engaged in enhancing the "culture of compliance" around ICANN's key contractual relationships.

As noted above, active negotiations are underway with ICANN's accredited registrars regarding amendments to the Registrar Accreditation Agreement (RAA). By ICANN's meeting in March 2012, a series of amendments addressing the recommendations of law enforcement, including provisions related to Whois verification, requiring registrars to maintain points of contact for reporting abuse, reseller obligations, heightened obligations relating to privacy/proxy service, and others. The amendments are also expected to include increased compliance mechanisms. As discussed, ICANN is taking a strong stand in the negotiations, particularly in regard to issues relating to the verification and accuracy of Whois data. These strengthened provisions are expected to be in place prior to the roll out of the first new TLD, and ICANN is considering mechanisms for encouraging adoption of the improved RAA.

As we recently indicated to Chairman Leibowitz and his staff, we look forward to the FTC's participation in an upcoming forum being planned by ICANN and the accredited

⁹ The citation to budgeted staffing numbers within ICANN's FY12 Operating Plan and Budget Fiscal Year Ending 30 June 2012 does not tell the full story, as it does not reflect the actual staffing level of the Department. Today's Contractual Compliance team has four additional members than it did a year ago – nearly doubling in size.

¹⁰ See ICANN's Career listing page, at https://icann-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.allpositions&company_id=16025&version=1.



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gTLD registrar community to look at available tools for WHOIS verification and authentication.

ICANN's Management is committed to vigorous enforcement of both registry and registrar contracts. A more proactive approach by ICANN, combined with the uniform provisions of the proposed new gTLD registry contracts and the stronger enforcement tools that will be available under the improved RAA, will all assist in holding all contracted parties to their commitments.

3. ICANN is Committed to a Monitoring of Consumer Issues

ICANN welcomes and thanks the FTC for its commitment to participate in the reviews of how the introduction of new gTLDs promoted competition, consumer trust and consumer choice as required under the Affirmation of Commitments. As noted in your letter, there is a cross-community working group formed to do preliminary work towards this review, and involvement of the FTC can have at this stage would also be welcomed. In addition, ICANN would welcome any specific proposals regarding how ICANN could supplement the work it does regarding consumer complaints.

Of course, the monitoring of consumer issues related to the expansion of new TLDs may give rise to the need to create new mechanisms to deal with these issues – this is a longstanding practice within ICANN. For example, the need for the Inter-Registrar Transfer Policy was brought about by consumer complaints regarding barriers to transfer. ICANN is committed to working with the community – including the FTC – to identify new areas of concern and to be proactive in addressing how to address new consumer – and other – issues as they arise.

4. Evaluation of Proposed New gTLDs Allows For Consideration of Potential For Consumer Harm

The New gTLD Program contains significant safeguards for the assessment of all proposed new gTLDs. Security experts in the ICANN community worked together to fashion ten specific consumer protection measures that are included in this Program, and some are described in this letter. As rightly noted in the Commission's letter, the GAC Early Warning and GAC Advice provisions are not the only opportunities for evaluation of the potential for consumer harm associated with any individual application. Upon the



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close of the application window, all of the applied-for strings will be made public, and multiple objection processes are available to stakeholders in general, as well as governments. In addition, there will be an “Independent Objector” function that will act in the best interests of the public and file an objection to an application as deemed appropriate. Through these well-defined objection processes, risks of user confusion are mitigated, as well as the risk of the introduction of a string that infringes on the legal rights of another.

In addition, the stringent background checks for applicants and the breadth of information collected on officers and directors of the applicant registries reduce the likelihood that persons that already have a history of malfeasance would pass through the application process.

Conclusion

The ICANN community has worked tirelessly to create a New gTLD Program that will introduce competition and innovation at the top level of the DNS in a way that preserves security and stability, and enhances protections when compared with existing TLDs. Governments have provided advice; professionals have weighed in. The new gTLD implementation program represents opportunities for innovation and enhanced competition, with a future of stronger rights protections, stronger consumer protections, and measured paths forward to future rounds. ICANN also has significant work underway to address calls for improvements to Whois data within all gTLDs.

ICANN looks forward to the FTC’s continued engagement on all of the important issues raised within your letter.

Best regards,

A handwritten signature in black ink, reading "Rod Beckstrom", followed by a long horizontal line extending to the right.

Rod Beckstrom
President & CEO