



21 December 2018

RE: Response to Complaint Regarding the RySG's concerns that, in its view, several ICANN org questions in its November 2018 DNS Infrastructure Abuse Registry Audit Request For Information are out of scope

Donna Austin, Chair
Registries Stakeholder Group
Via electronic mail

Dear Donna Austin,

Thank you for your submission. In your 19 November 2018 complaint (see: <https://www.icann.org/en/system/files/files/complaint-00007682-redacted-19nov18-en.pdf>) you explain that it is the Registries Stakeholder Group's (RySG) opinion that the ICANN organization's [November 2018 DNS Infrastructure Abuse Registry Audit Request For Information](#) (RFI) contains many questions that are outside of the permissible scope of an audit under the terms of the Registry Agreements. I appreciate you bringing this to the attention of the ICANN org (all subsequent uses of "ICANN" refer to the ICANN organization).

The Complaints Office was established in March 2017 as an operational accountability and transparency mechanism. The office handles complaints that don't fall into another complaints mechanism. Once received, complaints are researched, facts are collected, reviewed, analyzed, a response is issued to the complainant, and, if applicable, issues are resolved as openly as possible.

I've reviewed your complaint and researched its issues with various departments inside ICANN. Following my review, research and internal discussions, it is my observation that the primary issues raised by the RySG are: the RySG and the ICANN org have differing interpretations regarding the audit language contained in the various registry agreements, the RySG has requested that ICANN denote the RFI questions with the corresponding registry agreement obligations, and that the RySG is concerned with the way that ICANN handles personal data received from contracted parties.

To start, it is true that the RFI is generic in nature, however the audit reports are not. Each audit report is specific to each registry agreement that is audited. This is because ICANN would need to create over 1200 RFI's in order to address the varying terms in each registry agreement, rather than issuing just one RFI for all registry operators to respond to. If a registry operator believes that one or more questions in the RFI are not applicable to their registry agreement, they have the ability to indicate this in their response to the RFI. If, once the ICANN org reviews the registry operator's response to the RFI, there is disagreement between the two parties regarding applicability of one or more questions -- then the disagreement can be discussed throughout the audit process. And, lastly, should ICANN identify deficiencies during its audit, the individual registry operator's audit report will specify each deficiency and the corresponding section of the registry agreement.

Based on the above, I found that denoting the corresponding section of the RFI with the relevant term(s) of the registry agreement for each registry operator would not be operationally feasible

or efficient for the ICANN org. Additionally, because the full audit process has built in opportunities to address any RFI questions a registry operator believes are inapplicable to them on a case-by-case basis, making the requested changes does not seem necessary.

Next, while I appreciate that there is disagreement between the ICANN org and the RySG regarding the interpretation of the audit language contained in the registry agreements, resolving a contract dispute between parties is outside the remit of the Complaints Office. Neither the Complaints Officer nor the Ombudsman are empowered to resolve contract interpretation disputes. However, as I'm sure you are aware, the Registry Agreements lay out ways that Contracted Parties may raise issues with ICANN regarding interpretation of the language in their agreements. Or, if RySG or individual Registry Operators believe that the ICANN org's conduct has risen to the level of meeting the pre-requisites for filing a Bylaws mandated [Accountability Mechanism](#), then those are also available.

Lastly, your complaint discusses *Data Privacy Concerns* that the RySG has and needs a response to. This topic also falls outside the remit of the Complaints Office; however, I did want to provide you with some guidance that may be helpful. You may be aware that on [6 December 2018 the ICANN org responded](#) to the [Registrar Stakeholder Group's 4 October 2018 letter](#) regarding this same topic with similar questions. The published response from the ICANN org may answer the questions the RySG has. However, if the RySG or registry operator's still have questions, I suggest putting those questions in writing and sending them to either Cyrus Namazi, Vice President Global Domains Division, or to Jamie Hedlund, Senior Vice President Contractual Compliance & Consumer Safeguards. Your questions do not need to be submitted through ICANN's formal correspondence process but can be emailed directly to Cyrus and/or Jamie. Or, if the RySG prefers a more formal approach where ICANN publishes the submission and the corresponding response, then questions can be sent to correspondence@icann.org.

I appreciate you taking the time to submit this information and for the opportunity to work with you regarding your complaint. ICANN is committed to always working to increase its effectiveness and to provide additional transparency and accountability, all in service of ICANN's mission. Further, I appreciate your and the Registries Stakeholder Group's continued participation in the ICANN model, your contributions to helping us work towards being our very best, and the opportunity to provide you with this information.

Kind regards,

Krista Papac
Complaints Officer
ICANN