
Enhancing ICANN Accountability – Work Stream 2 (WS2)

Recommendation 4.1.3 - Implementation Documentation

Enhancing ICANN Accountability – Work Stream 2 Final Report
<https://www.icann.org/en/system/files/files/ccwg-acct-ws2-final-24jun18-en.pdf>

See <https://www.icann.org/resources/work-stream-2-implementation-en> for more information on Work Stream 2 implementation.

WS2 - Jurisdiction - Recommendation 4.1.3

Application of OFAC Limitations by Non-U.S. Registrars

It appears that some non-U.S.-based registrars might be applying OFAC sanctions with registrants and potential registrants, based on a mistaken assumption that they must do so simply because they have a contract with ICANN. Non-U.S. registrars may also appear to apply OFAC sanctions, if they “cut and paste” registrant agreements from U.S.-based registrars. While ICANN cannot provide legal advice to registrars, it can bring awareness of these issues to registrars.

The sub-group recommends that ICANN clarify to registrars that the mere existence of their RAA with ICANN does not cause them to be required to comply with OFAC sanctions. ICANN should also explore various tools to remind registrars to understand the applicable laws under which they operate and to accurately reflect those laws in their customer relationships.

Final Implementation Report

ICANN org maintains strong relationships with its contracted registrars, and registrars are expected to follow the laws applicable to the jurisdictions within which they are located or other relevant jurisdictions. The recognition that ICANN cannot provide legal advice on applicability of laws is important. Further, many jurisdictions around the world have trade regulations regimes that might be applicable, and so the identification of applicable laws is a business responsibility of each registrar. This means that a notice or advisory that U.S. laws might not be applicable to registrars could be meaningless, as the registrar could still be subject to a similar trade regulation (which could be more restrictive than U.S. regulations are perceived to be).

In October 2023, the [Agreements & Policies](#) webpage on ICANN.org was updated to explain how registrars can identify the laws applicable to their operations, and that those laws may be different from the laws with which ICANN must comply. Language reads as follows:

Registration Agreement: every registrar shall require all registered name holders to enter into an electronic or paper registration agreement with the registrar. This agreement must comply with all the obligations and requirements established under the RAA. Every registrar is encouraged to consider whether their registration agreements are sufficient under the laws, rules, and regulations to which the registrar is subject. For example, a

registration agreement that is based upon U.S. laws, rules, and regulations may not be the appropriate registration agreement for a registrar that does not conduct business within the U.S.

Issuing a reminder that registrars should consider the appropriate and applicable laws for their relationships is helpful in reminding the registrars that ICANN does not make these determinations for its contracted parties.

Rationale

Adding the language to the Agreements & Policies webpage was a transparent way to satisfy the recommendation.

Timeline

Expected implementation date: Q2 2022

Final implementation date: Q4 2023

Milestones

October 2023 - agreements and policies webpage updated to include clarification.