

ICANN

**Moderator: Nathalie Peregrine
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5:37 am CT**

Ron Hoggarth: Welcome back, everybody. We're going to get started in 30 seconds with our next session. I'll come over here, close the doors and we'll get started. Thank you all on remote participation for your patience. We will be starting momentarily. Jonathan, Anna and Jamie, we're getting ready to start now our plenary lunch period, ICANN compliance issues.

Quick time check. We had hoped to schedule and start this session at noon. It's now about 26 after, so I chatted with Jonathan. We're going to extend the period and try to take you until at least 1:45, that's 13:45 UTC and then we'll work on slots E and F, plenary sessions 2 and 3. Let me stop and turn the microphone over to Jonathan and Anna and let you guys get started introducing Jamie and moving forward. Thank you.

Jonathan Zuck: Thanks, appreciate the upfront and the extra few minutes. There might be a little bit of a typo in the session description because it says something like "We're going to have Jamie Hedlund for lunch" and I - maybe it's supposed to say "over for lunch" or something like that, but I...

Woman 1: Perhaps "lunch with Jamie"...

Jonathan Zuck: ...it really guided the construction of the session, so Jamie, I apologize in advance - how much I can be thrown off by just a single word in a description like that, but... I mean, I think we're as a group very excited about your upcoming tenure in this job that many of us view as a very critical part of the organization and we are very interested in hearing what your plans are for the organization. I think if we're looking for some overall themes that we can really agree on as a non-contract contracted parties, the themes are probably transparency and operational consistency. And so I think that that will be sort-of the basis of a lot of the discussion that we're trying to have with you and the questions we'll be raising with you. But you mentioned that you wanted to say a few words before we got started so I wanted, without further ado, to hand the microphone over to our newly-appointed head of ICAAN Contractual Compliance, Jamie Hedlund. And welcome aboard, Jamie.

Jamie Hedlund: Thank you. Is that the sound of the warmup before the meal? So, thank you very much for having me here. It's great to be here. As Jonathan said, I am brand-new in this role. It's been a little bit more than a month. I think I know a lot of you here but not everyone, so I thought I would give just a brief introduction and then go through a few slides -- 26 slides -- just kidding, only three slides.

I am an American, but I bear no responsibility for the current administration. I am from Chicago. My mom -- my mother -- was in Cook County politics and I am a registered lobbyist, but despite that I do believe in transparency and accountability. I am a lawyer by training. I have been at ICANN for seven years -- somehow it seems like longer -- and have three teenaged kids. I'm going to continue to stay in DC but, because of the demands of the role as well as having three teenaged kids, I will be in LA frequently.

I am - I report directly to the CEO, so I hope that that will provide the independence that so many in the community have called for and, even more importantly, I hope that you will call me on it if you somehow feel that my independence -- and the independence of this function -- is compromised. I'm - as I said, I've only been in the role for about a month, so I don't come here bearing any bold observations or pronouncements, but really do want to hear from you what your concerns are, what you think the priorities should be, where you think ICAAN Contractual Compliance and Consumer Safeguards should focus. I will do my best to answer any specific questions, but I will use the excuse of being new in the job to offer to come back with answers if you have them.

So now a couple -- a few -- slides. So recently I was asked to give an internal narrative on what's the purpose of Contractual Compliance and Consumer Safeguards? This is what we came up with for Contractual Compliance and I hope that it demonstrates, Jonathan, that we also take it very seriously. Goran, who you'll hear from later, for him Contractual Compliance and Consumer Safeguards is a high priority. It's critical to our legitimacy and our credibility and the credibility and legitimacy of the Multiple Stakeholder Model.

There are three initiatives -- which I can talk about a little bit more later -- that we are starting to think about. One is focused on transparency in our reports as well as in the data that we supply. Jonathan is - facilitated a discussion within the CT Review Team -- which I'm also on -- and we expect recommendations to come out of that asking for both more in terms of transparency in the rationale and in the actual decisions that we make, as well as more granularity in the kind of data that we put out. As that report - or as the draft report - or during the public comments for that draft report and here and elsewhere, you know, the more specificity that we can get from you all and from stakeholders generally about what you're looking for in terms of both the decisions as well

as the granularity of the data, the better. Just saying, obviously, we're not transparent enough or we don't say anything or that we don't provide any data, that's not helpful. But what is helpful is "This is what we want to see." I'm confident that this group and others will be able to provide that.

With transparency there is, as I'm sure many of you have heard, there is a bit of a tension. You know, a lot of our work with contractual compliance is done in informal, cooperative, collaborative investigations. And we rely on -- and the complained-about party relies on -- confidentiality in the initial part as an important way of fostering cooperation and collaboration to get to a quicker resolution. There is a concern that if we publish information right from the very beginning, that that will chill collaboration and will actually delay potential resolution. On the other hand, it doesn't make sense to come out with a response following an investigation of "Case closed". I mean, that's not sufficient transparency. So there's two different things. One is transparency during the investigation or inquiry and then transparency in terms of the decision. I'd be grateful for your input on that.

Another initiative we're starting to look at is whether more can be done to go after known purveyors of malware. These are folks who are engaged in sort-of infrastructure abuse. The mission, you know, talks about our responsibility for maintaining the security -- or helping to maintain the security and stability -- of the domain name system. Distribution malware could and does, often, create harm to that, so I am coordinating closely internally with David Conrad's team, the SSR team, to look at whether there isn't more that we can do on that front.

And then, finally, you'll see more in a bit - we're proposing the creation of an ad hoc community working group, somewhat similar to Xavier's working group on finance, but focused on compliance and consumer safeguards. It

would be made up of, you know, members of the community, would meet regularly, would allow for a sort-of transparent airing of concerns. So, next slide. Oops - no, go back. Sorry. Go back.

So this is the - sort-of the purpose role for the Consumer Safeguards position. We have a posting right now for a Director of Consumer Safeguards. We've gotten - we reposted it because the last time we posted, most of it was during the end of the year, which is a time when, according to HR, we don't normally get a lot of interest for, you know, for any position. So we have reposted it. If you know of good people, please encourage them to apply. The three sort-of main things we hope this person will do -- 1) is to engage with the community to raise awareness of existing safeguards, 2) facilitate discussions with stakeholders on the perceived adequacy of existing safeguards and the potential need for additional safeguards, and then 3) to continue to facilitate discussions among stakeholders regarding the voluntary adoption of consumer safeguards that might be outside of ICANN's mission. So, next slide. This second one - this will be quick.

So this is more on the ad hoc working group proposal -- and I'm really interested in your views on this, whether it would be helpful or a waste of time -- but the reason that we've internally talked about why this might be a good idea is it would allow for an open and transparent dialogue to build awareness and hopefully foster a community-wide understanding of the issues. It would be an opportunity for ICANN to hear from the community on a more regular basis on how we can strengthen the performance of these functions, but it would only succeed to the extent that there is community-wide participation. So for the remaining part of this session, it would be great to hear views, if anybody has any, on this idea.

And then finally, the last slide, so these are just - I know you don't need my help to come up with questions and concerns, but for me -- you know, being new in the role -- it will be extremely helpful to begin to understand from you what are your concerns, what are your priorities, what do you think Contractual Compliance should be doing better. What are your concerns or your priorities for the Consumer Safeguards role? What new initiatives do you think we should undertake that would help you?

So with that I turn if off - back to Jonathan.

Jonathan Zuck: Thanks, Jamie. Just a quick question. From your intro, I guess a lot of people are curious about what your interest was in doing this, in a way. What spurred you on to want to be the Head of Contract Compliance inside ICANN? And you've built your recent career on being a kind-of advocate for the organization and I think you have done very well in that process and helped shepherd through the transition (Unintelligible) government, et cetera. And now you have to play a very different kind of role within the organization. And have you thought about what that transition is like from, you know, being popular in the community to, you know, being less so? What are your thoughts on making that kind of transition and trying to be almost the outsider now instead of the insider, if that makes sense?

Jamie Hedlund: Yes. That makes sense. So I guess I've been - I was born for this role, because I've never been very popular, particularly at home. So, but I get your point. So I see the advocacy part of this role as very different. This isn't advocacy for the organization. This is advocacy for the legitimacy of ICANN writ large - it's for the legitimacy and credibility for the multi-stakeholder model. I was interested in this role because the issues that come before Contractual Compliance are some of the same issues that I worked on in DC in various jobs, you know, dealing with the intersection of the Internet and public policy.

A lot of the stakeholders for ICANN that were active in the new gTLD program or the transition and other issues affecting ICANN in Washington are also -- some of them, many of them are -- here and active in contractual compliance matters. I am, if nothing, you know, fiercely independent. I've often wondered why I've been able to maintain my job despite some of the things I've said internally. So I will - I see this role as - I mean, in a way it's fairly easy in that it's focused on the contracts and not focused on, you know, broader issues within ICANN. It's obviously much harder because stakeholders have very different views on what contracts mean. So I - it's a challenge, I love a challenge and so I'm very much looking forward to undertaking it.

Jonathan Zuck: Thanks, Jamie. Is there anybody that has a question about Jamie's presentation -- the things that he mentioned specifically? We'll have more of a free-for-all toward the end, but about the things he just raised in his slides and things like that? Go ahead - and introduce yourself.

Poncelet Illeleji: Thank you, Jonathan. Poncelet speaking for the record. Jamie, thanks for your explanation. I wanted to look at it from your new role within Contractual Compliance, how do you want to relate within the different facets of the multi-stakeholderism now in ICANN? Because you now have different interpretations and stuff like that. Thank you.

Jamie Hedlund: So I understand the question to be "How do I see interacting with the different stakeholders within the community?"

Poncelet Illeleji: Yes.

Jamie Hedlund: So, it's - I can't do the role without it. I can't perform this role without active and continuous engagement with the different stakeholders in the community.

And one - and that can happen on a one on one basis. I'll talk to anybody, mainly because people don't often talk to me, but also -- going to the popularity thing -- that was part of the impetus for the idea of an ad hoc working group on Contractual Compliance to, you know, set up a rhythm of regular discussions, you know, to hear from everyone in a sort of open and transparent way.

Kathy Kleinman: Kathy Kleinman, and welcome to your new role Jamie. We all wish you luck. Now in terms of the community ad hoc working group, I'm going to cite the refrain that so many of us have said, which is there's no bandwidth. Would another possibility be holding regular meetings without lots of conflicts at the ICANN meetings? So, once every three to four months, when we can all meet together where we can hear each other... I'm really afraid that if you hold a community ad hoc working group, you're going to hear from certain parties that you expect would have a great interest in this, but you may not be hearing the balance on it. Because other people - you've got three PDP's going and lots of other things. So if we could hold these discussions at the ICANN meeting, we can all be there together. Thank you.

Jonathan Zuck: Alright, Greg and then Mark and then Avri.

Greg Shatan: Thanks. I would like to say that I think the ad hoc working group, and if it's similar to the way the budget one has run, is a great idea. I participated in the budget group, not from the very beginning but, I think... It doesn't meet every week, Kathy, so don't worry about that in terms of bandwidth and it does meet primarily at the ICANN public meetings and then a couple of times in-between. So it's not a 52-week commitment every time. But I think that that kind of regular, sustained conversation, we do get very much more kind-of in-depth and do get to drill down in the meetings with Xavier and we get a much greater understanding and there's -- tease things out and sometimes there's --

you find some bone of misunderstanding that when you are able to get past it, a lot of other stuff suddenly starts to fall into place. And you don't get that just in these kind-of public sessions or where there is just a changing cast of characters. So I think that kind of thing with depth and breadth and length really would be a game-changer, because my feeling about compliance has always been that it's kind-of "over there" and that it kind of stays over there no matter how much you try to approach it, and if you try to take it on it's like punching a pillow. You fall asleep trying to do it and the pillow looks the same at the end as the beginning. And you're exhausted. So there's a - I think being able to engage in that way, whether I like what I'm finding out or not, there's the chance for both more knowledge, more dialogue and I think that - and I would hope that you would get a balanced multi-stakeholder group although I'm participating in three PDPs and running a - rapporteur of a subgroup in the ccWGM, participating in another one and running a constituency and - but I think I might have the bandwidth.

Jonathan Zuck: Marc, go ahead.

Marc Trachtenberg:: Jamie, I just wanted to add my welcome to the chorus of welcomes. You had mentioned that one of the initiatives you wanted to do is to increase transparency in reports. And I just wanted to get clarification on whether you are referring to general reports issued by Compliance or whether you were referring to specific reports of individual violations that are made to the Compliance Department.

Jamie Hedlund: So I was really talking about the latter, but if you all think and others think that there is - it's lacking in the former, that's an even bigger issue and we would hope to increase transparency there.

Marc Trachtenberg:: I mean, I was more asking about the latter and I think we'll discuss that later. But thank you for the clarification.

Avri Doria: Thank you. Avri speaking. First of all, I want to congratulate you on being unpopular, outspoken and keeping a job and wondering if you do any counseling for those of us that haven't managed to keep all those three together. But the question I wanted to ask had to do with the compliance and picks and especially the areas where you do have people contending that some of the picks are counter-mission. They may not have been when they were written, but now they appear to some people to be. So I'm just wondering what -- it's almost a meta-outlook, not "What are you going to do?" -- but sort-of how do you look at that contradiction where you have something that is a contractual obligation and you have something that says you're not allow to mess with that because it's contra-mission. And so how do you see that contra-position?

Jamie Hedlund: Like a lot of things at ICANN, I guess. The - it's hard to talk about that in the abstract, right, because - without a specific report of a violation. There are picks, they are in the contract, they are enforceable. We have the opportunity either to judge -- adjudicate -- pick (Unintelligible), alleged (Unintelligible), pick violation internally or send it to a panel. And like any dispute we, you know, try to get through it and the on-going discussion about what's in or what's out doesn't factor in so much at the resolution phase as it would right now in the subsequent procedure PDP in terms of (Unintelligible) going forward. As you know, the picks were grandfathered in the new by-laws. So we will, as long as that bylaw doesn't change and as long as the contracts don't change, our role is to enforce it or, you know, flip it to a panel to adjudicate it. But thank you for the kind words.

Stefania Milan: Stefania Milan for the non-commercial user constituency. Welcome very much to this great task. It's interesting to me that you say that you believe it's easy, so I can't imagine how difficult it was before. To me, this sounds very much like quicksand, frankly. And probably our community is going to be part of the problem, but of course we also want to be part of the solution. So as the advocates for non-commercial users in the domain name system, we have very much concern with compliance as a way to enforce, for example, copyright, entering directly into content regulation. Also we have very much concerns about several cases of abusive complaints, repetitively abusive complaints that we have asserted in the past. So as we learn to work together I would like to reiterate our support and preference for a fair and balanced approach to this matter, precisely for the reason that you outlined earlier, as it very much relates to issues of trust, credibility, transparency and so on and so forth.

And secondly, more like a practical question. So we have seen the proposal for the working group, but how can we really get involved? What are the different spaces -- you know, the different options -- that we have as advocates to engage. For example, what's the role of the Contractual Compliance audit program and how do you see the new working group working in interaction with existing mechanisms. Thank you.

Jamie Hedlund: Sure. Thank you. So I will try to address it all and if I forget anything, please let me know. But, you know, in terms of copyright, I mean (Allen) was pretty articulate about what's within ICANN's remit, and what areas we have not just expertise in but authority. And there are a lot of challenges that remain both with copyright, with pharmaceutical claims and so we will continue to struggle through it. We will continue to support very much some of the voluntary initiatives that have taken place both with (DNA) as well as some of the voluntary agreements that (MPAA) has struck with Donuts and Radix.

What matters more than anything, for me, just sort-of philosophically, is that things get done and things get settled. And there are obviously limitations on how you can do that. And it strikes me that these voluntary initiatives could have the potential to help resolve these complaints without potentially expanding ICANN's remit or getting us out of scope.

In terms of the working group, this is an idea in formation, so I anticipate that it will be wide-open for anyone to join, so just show up and participate. And I think - did you have another question?

Stefania Milan: Yes. It was about the introduction of the already existing mechanisms and, for example, the audit program -- and others that might exist that I might not even be aware of -- and the new working group. So how do you see all this coming together?

Jamie Hedlund: So, no. A lot of those programs will continue on their own and not be affected by the creation of this group. But I could see that the working group would discuss some of the issues that are going on with some of those other programs, if that makes sense.

Stefania Milan: Yes. Thank you very much. If I could also underline that we're also very happy with things being done but we'd also like to see them done well, meaning very much in line with our principles and what we stand for. So, again, I would like to reiterate the call for a fair and balanced approach...

Jamie Hedlund: Absolutely.

Stefania Milan: ...to the entire set of issues that you have ahead of you.

Jamie Hedlund: Absolutely. Thank you.

Stefania Milan: And good luck.

Man: Thank you.

Raoul Plommer: My name is Raoul from (Impac). Just a quick newbie question. What are the steps in making a complaint in the compliance process?

Jamie Hedlund: Well, it starts with going to the website and filling out a complaint form. I'm not sure - I mean, there are various steps associated with different types of complaints. Is there anything in particular you were concerned about?

Raoul Plommer: For example, do some of the complaints, are they done automatically or is there always a human considering them?

Jamie Hedlund: So right now there is very little automation -- as far as I am aware of -- with the actual resolution of complaints. They all involve human review.

Raoul Plommer: Thanks.

Jonathan Zuck: Okay. Let's go ahead and cut it off there and continue on to (Jim) if we can.

(Jim): Okay. Thanks, Jonathan. First of all, thank you for the work you did on the transition. You got it through just in time as (Unintelligible) results showed, but thank you very much for doing that. A lot of us in this room dedicated a good portion of two years of our lives to making that happen. And without your work I'm not sure we would have gotten it through. So thank you for that. I'm a little bit concerned about what you've said earlier and a little bit confused. Are you telling us that ICANN has decided - the Board, perhaps has decided - someone else has decided that we like the DNA Healthy Domains

initiative, that we support the Donuts (MPAA) agreement? Because that has not been discussed in the community. I know of no Board action and am very concerned about these agreements - private agreements plus ICANN. So I want to know if what you're saying is just sort-of a personal aside or is that now ICANN policy? Thank you.

Jamie Hedlund: Thank you and thank you and everyone here who helped on the Hill, because it would not have gotten done without everyone's help. I mean, I know that there was a ton of effort expended besides our own. And one thing I learned in representing ICANN on the Hill is that ICANN alone has very little credibility. And it's really when the stakeholders go in and say "We want this" that it makes a big difference. So on your question, obviously there is no policy in favor or against these agreements. I can tell you a few things. (Allen) and others in the past spoke with stakeholders, you know, on both sides to - about how to resolve some of these important issues that are plaguing the Internet and that are in areas outside of ICANN's remit. And volun - we've never seen any of the voluntary agreements, so we can't, you know, I've never seen them. So there's no official ICANN view on any of the agreements. But in terms of their efficacy addressing an issue that is outside of ICANN's remit and therefore removes pressure from ICANN to exceed its remit, that's a good thing. That's my personal view. It's not a policy view. Anyway, so I hope that's helpful.

Jonathan Zuck: I'm passing it over to you. Go ahead please.

Marilia Marciel: Thank you. I'm small - the flag is bigger than I am, so it's hard to spot sometimes. But I just, well, first of all, I think...

Jonathan Zuck: And say who you are too.

Marilia Marciel: Oh, yes. Marilia Marcial speaking for the record. I think that an honest discussion is really fundamental and many times we go to Compliance saying what we think should be in there or should not be in there, but I think it would be useful to hear from your side as well. Because we are well aware that many times, the policy development process takes more time than other parts of the community would like it to take and, although we try to act as efficiently as possible, sometimes there is nothing that we can do about it. But if we are clear about your concerns and the problems that you are facing or the legal liabilities that this is creating, of course we can take that into consideration. So first of all, I think that it's a very good -- tremendous -- idea to have this frank discussion on an on-going basis.

The second thing is it would be really good if you can be clear as well with regards to pressure that this department may be suffering from parts outside ICANN, from other actors, and I say this because last year I had the chance to attend the Internet and Jurisdiction Conference and one of the tracks of discussion was domain name seizures and there were a lot of our registries, registrars and members of the GAC and it was really an interesting discussion about, you know, when a citizen comes to a government or a company comes to a government, "I'm having a problem with - either copyright related or malicious or some kind of scam. I want this domain to be taken out." And governments were saying "I don't want to be bothered by that so I would prefer for you, if the industry could self-regulate. That would be a good thing." The possibilities to self-regulate - one of them is to insert things on the contracts with registries and registrars, but many of them are saying we are not even waiting for that. We are just doing that ourselves. So in our terms of service with the end user, we are including provisions that would allow us to act fastly if we have problems related to cyber-crime or child porn or anything like this.

So my question is just how do you see your role inside this pressure? Because, of course, if different registries and registrars start to have their own policies, that could be extremely sort-of (volcanizing) of the whole system and confusing to the user. Of course, I also understand that it could be hard for you, maybe, to try to harmonize the different policies. But one point of pressure may be compliance, another point of pressures is the registries and registrars themselves. I don't know if you see yourself in a role of try to promote dialogue or try to promote more harmonization, but that is something that really interested me the moment that I heard (Unintelligible).

Jamie Hedlund: Sure. Thank you for that. Obviously, we're all for harmonization and dialogue. Or at least we're all for dialogue. It's hard to say for harmonization - - or knowing what's getting harmonized -- but the - we enforce the contracts and we enforce the contracts as they are and so there is, you know, with any particular (Unintelligible) or complaint, there can be a lot of complexity. And so we are not always in a position to rely on the contract to resolve that. Sometimes that's because it's outside of the scope of the contract and outside of the scope of the mission. Other times is because there is ambiguity in the contract and so we are - we have definite limitations, but I think what's sort of compelling about these voluntary discussions, if done correctly, is that they provide another avenue of addressing issues that are outside of ICANN's remit.

Man 2: Okay this is (Unintelligible) just relaying a question from Stephanie Perrin, who is calling us remotely. So, actually a few questions. So this is Stephanie Perrin for the record.

Question 1 - How does Compliance decide which areas they check on? I'm particularly interested in the rather sparse end-user protection that is presented in 2013 RAA. Have you ever done an audit and where the registrars are

complying with the obligations of disclosure to the customer, have you ever audited where there (Unintelligible) gathering going on unpaid by third-party service providers.

I guess the second question. We look forward to the appointment of a consumer safeguards director. As representatives of the end user, we have a number of concerns, not all of them you may consider within your remit. It will be good to get some clarification of what you consider within your (unintelligible) in terms of consumer protection. For instance, there is a rather limited requirement within the RAA to provide the end user with an explanation of their rights and I understand ICANN is not a regulatory body.

It's a replacement for that, but I believe there's lack of compliance within the D and S Ecosystem registrars, re-sellers, service providers to inform end users of their rights, privacy rights and the data protection law in particular, but also consumer protection law. In terms of your question what else pending further details on the scope of your (unintelligible), can we have a look at some of the conflicts of interest that appear at ICANN when different parties speak about consumer protection?

Many parties declare that their job is consumer protection, but it's my observation that there are very few real consumer protection agencies participating at ICANN. Perhaps they simply look at participate in all the PDPs in which (unintelligible) and that last remark was meant as a question. Are there consumer protection agencies engaged in ICANN. If so, where are they?

Jonathan Zuck: Okay. I'm actually going to table those questions because there's some presentations and things in there. That's a dissertation answer to address all of

them. (Unintelligible) if you can be really pithy because we want to continue on so go ahead and ask your question for Jamie.

Kathy Kleinman: Great. Thanks Jonathan. I'm sorry to delay this. Kathy Kleinman. Jamie, can we go back to the first slide? Not that one. Okay. I think it's the next one. Next slide. Can we go to the next slide? Okay so we must demonstrate commitment safeguarding the interest of consumers in the domain end space. My question for you is consumer. We've debated this for years. What is a consumer and a consumer could be - and I'd like to know on your side, but clearly one group of consumers is those purchasing the domain names themselves?

Whether we have this discussion now or whether I get to queue up first after the next set of presentations, I'd love to know the contractual complaint process from the perspective of the consumer, from the perspective of the registrant but first, I'd love to know your definition up there and then I'd like to come back later with some questions from a registrant perspective about the complaint process because we're getting questions.

Jonathan Zuck: Sure. I mean the definition of consumer is also potentially a dissertation length discussion and I don't see a reason to define it narrowly. It obviously includes registrants. It includes internet users. It includes businesses that are consuming domain names so it's a very broad definition and unless someone comes up with a really good reason to exclude from consumer other than the registries and registrars, I would say it's pretty broad.

Kathy Kleinman: A quick follow-up question for now or later is how are the interests of the registrant represented and how they can represent themselves in the complaint process? Thanks.

Jonathan Zuck: How the registrant could represent itself in the complaint process?

Kathy Kleinman: Yes so specifically.

Jonathan Zuck: If there's a complaint against a registrant?

Kathy Kleinman: Yes. How does a registrant know a complaint's been filed against them? How do they know what information is being considered? How do they know what decision's been made and how do they know how to challenge it?

Jonathan Zuck: Right.

Kathy Kleinman: How do they know who's taking down their domain name and why?

Jonathan Zuck: As you know, ICANN has contracts with registries and registrars. It does not have contracts with registrants, but the contracts with registries and registrars do require - and the claim process in particular, that the registry or registrar be in touch with the registrant to resolve a complaint. We ask the registrar - first we ask the complaining party whether they've talked to the registrar. After that we ask the registrar what kind of dialogue have you had with the registrant and then the registrar ideally conveys the substance of their interactions with the registrant about whatever the alleged complaint is.

Okay. I want to post back a little bit to our agenda. We're gonna end up having more free form discussion as well. We were talking about transparency and consistency and things like that and I think Anna really wanted to - having spent some time with compliance staff and the metric staff - give us a little more of a sense of what kind of data's actually available already from contractual compliance that we might not be aware of, but I won't say more

and let you define your own talk here certainly so and there's some slides for Anna. Thanks.

Anna Loup: Cool. Thanks. Yeah we've been sort of talking around this issue of data and reports. At the very beginning, we're talking about sort of locating and formulating your questions using sort of data granularity so I think it's really important to go back to the basics right? Where can you find this data on the ICANN website because it's there and I think there are a lot of answers that are in this data and there are yearly reports. There's a monthly dashboard and just quickly go through it so we can actually get to the discussion here, but I think there are a lot of questions that can come out of an examination of these reports. Real quick this the dashboard that you have here. All these should be linked. Can we go to the next slide?

Sorry. Cool. This is the monthly dashboard and it's broken down pretty well and you can sort of work with the data. Next slide. The next are the yearly reports. These have sort of a lot more data. They've been broken down a little bit and I think these would be really helpful if you're interested in really joining the group - figuring out what questions you want to ask. Final slide - I'm trying to get through these quick so you can have conversation - is the CCT metrics. There's compliance data that's also reported in the CCT metrics and this will actually be helpful for the later session as well - talking about the new GTLDs but really what my big push here is that there are reports. There is data on the ICANN website.

It is not readily available and this is one of the concerns that I do have and I would really be interested in hearing discussion about that and access to these reports. Maybe asking Jamie about - sort of making these more available.

Man: Maybe I'm just being thick, but you said it's on the website but it's not available.

Anna Loup: It's not readily available.

Man: What does that mean?

Anna Loup: For instance, I usually go - to get access to the dashboard, I Google it because the search function.

Man: Welcome to the ICANN website.

Anna Loup: The search function on ICANN.org is not reliable so you have to know what to search for in Google before you can get access to it which is I think a problem.

Woman: The general nature of the ICANN website.

Anna Loup: But that's why I made an effort to put these links up there so that everyone here does have access to this data and can participate in what I think is a very important conversation that shouldn't just be had by folks who have sort of been within the community for a while because compliance is really an important issue.

Jonathan Zuck: Thanks Anna. I mean the challenge is as Avri pointed out, the challenges with the ICANN website are well known and it's not just compliance but having said that, we're going through a review of it and the compliance pages are some of the most visited - it's probably the most visited page so people are getting it - whether it's the right subset or not, I can't tell you.

Anna Loup: Nope I think I'm good. I just wanted to make sure that everybody is on the same page with regards to what reports are being mentioned in previous discussion.

Jonathan Zuck: Thanks Anna. I think one of the general themes that is rising to the surface here is one of kind of like operational consistency and so to kind of segue from Kathy's point, we might want to begin to think of various scenarios that happen and gaining an understanding of what the operational practices - and you may not know the answers to these in this meeting - but what are the operational practices of compliance given a particular scenario and so I think Kathy raises a good one that there's some interesting aspects too that would be good. If given a list of scenarios, contact compliance came out and said with absolute transparency that this is, in fact, what we do in this scenario. I take Kathy's as a starting point on that.

I wanted to go to a couple of other people that expressed interest in sharing some stories. One was Brian Winterfeldt. I don't know where he's sitting. Okay - who's gonna talk a little bit about dot feedback and tell a story there and again, to create another scenario that could be the basis of the beginning of Del Bianco style stress test for compliance and I think there might be some real value to that along the same lines of what Kathy began. Brian, go ahead.

Brian Winterfeldt: Thank you so much. Brian Winterfeldt, IPC. For folks who aren't familiar, dot feedback is a registry that has had a Pick DRP complaint filed against it. It was coalition of about 12 brand owners who pulled together. I think the dot feedback registry is one that is probably of interest to a lot of people in this room. They report to have a free speech component to the platform yet they require you to use their proprietary platform in order to express your free speech unless you pay an additional large fee to be able to direct it to your own resources.

There are a lot of large issues that were of concern to the folks who filed the Pick DRP including reservation of trademarks, pre-sunrise exorbitant registrations fees to the tune of about \$5,000 to reserve your name certain sunrise. There was also a free dot feedback website that's still available where anyone could go in and plug in any name they wanted including anyone's brand and that automatically registers the domain name. It scrapes the content from the dot com version of that brand and that populates to who is with that information.

It then sends a notice to the folks in the dot com who are populated in the email that they've registered this name and they should renew it. There are cases where brand owners do not initiate that registration, but they don't have maybe super clear process fees, or they think that other people in their organization requested it and then they would actually then proceed to renew or pay the fee for that registration.

In addition, the pages that they either reserve themselves directly, or registered through related parties report to, or they populate in a way that looks like it's potentially the brand owners so if you look for example, at Facebook dot feedback, you'll see it has a Facebook logo and they scrape reviews using an API from Yelp for example, but the reviews will be brought in with different dates.

Pictures will be assigned to some of the comments but they don't match up with the actual users that they pulled from - the reviews from Yelp. There's sort of a lot of concerning things.

One of the other things that was very concerning was the fact that on Facebook dot feedback and Instagram dot feedback and Whatsapp dot

feedback, they include a customer service phone number that is actually a scam that is a scheme. If you call them, they'll purport to represent Facebook, but the first thing they want is your credit card and information and they also want to remotely log into your computer to help you with any issues that you're having. It's something that was recently covered in MPR. That's just a little background information for everyone.

We filed a Pick DRP complaint. I think one of the concerns - which kind of goes to Jamie - is sort of transparency issues. The complaint gets filed. Basically the entire process is in a black box. If and only if eventually a panel is appointed and a breach notice is issued, does it become public in any way whatsoever. ICANN keeps everything completely confidential. It is sort of up to the parties whether or not they want to talk about what's going on.

In this case, we have talked about it but an example of kind of the transparency issues are we filed the complaint. We went through the mandatory conference with the registry operator. We reported that to ICANN. ICANN did indicate they are going to appoint a panel which we understand maybe the first time that's happened - at least from public information and that's what we know, but then we asked did the registry operator supply a written response which they were allowed to do.

We also asked what the timing would be for receiving that if they had drafted one and we also asked when the panel would be appointed and the compliance department came back and said that "We're not going to tell you any of that information." We recently wrote back and said, "Well this is actually very important. Once a panel's appointed, there's only 14 or 15 days until the panel has to do a reply. If we're going to receive a document, we need to be able to review it and see if there's anything we think we need to submit on behalf of the parties" so I think there's kind of a few issues there around - kind of

transparent and clarity both in terms of everything being sort of totally in a black box and us not even getting critical kind of details or information that are really important on behalf of the brand owners we're representing.

Jonathan Zuck: Jamie, I don't know if that's something you want to just absorb, or comment on now. I mean don't - I know you just started. I think again, we're gonna go through a few things that are on this scenario category and it's where the community as a whole is looking for a kind of operational consistency about how these scenarios are handled. Go ahead, Jamie.

Jamie Hedlund: No. I was just gonna say, Brian, thank you for that and I will take it back to see where along the lines we can be more transparent. Again, going back to what I said earlier, part of the challenge is before the decision is made whether - for ICANN to do it, or to refer it to a panel, there is engagement with the complained about party and so there is a tension between wanting to get them to be frank and cooperate and resolve this quickly and transparency which may - putting everything out there - which may have the unattended effect of just shutting them down and putting them in an adversarial posture which it may get to anyway, but I will go back and look and see - hope to be able to follow up with you later about the specifics.

Brian Winterfeldt: Thank you.

Jonathan Zuck: Kathy, did you have something on Brian's thing?

Kathy Kleinman: Yes. I wanted to flesh out another scenario. I find myself on the same page with Brian talking about transparency and transparency doesn't necessarily mean transparency to the world. I don't want to speak for Brian. It may mean transparency to the parties involved in making the complaint, or against whom the complaint is made.

Circling back to what we did before Anna's presentation, I'm glad she showed us where the reports are because these are things some people in this room need to follow much more closely but let me flesh out one Jamie that's on the record from before your tenure. A small photographer had a website and a trademark and actually sent a cease and desist letter to a competitor who then began a campaign of electronic abuse and physical threats against the photographer.

One of the follow ups was filing a complaint with compliance for which the registrar never notified the photographer and the domain name stopped resolving. The web sys didn't know why, pointed to the registrar, the registrar pointed to the registry and it took a long time. It took somebody with John Barryhill's connections to figure out what had happened and, of course, the business of the website - the ecommerce, the communication went down and the small photographer lost a lot of business.

It seems like registrants should have some kind of voice and what happened actually was that the telephone number apparently wasn't from the same jurisdiction as the address which certainly happens all the time now. It seems like not transparency necessarily to the world but transparency to the registrant and the investigation of a complaint that shuts down their website, their speech, their communication, their commerce would seem to be a very reasonable step. Thanks but let's throw it in as one of the scenarios to be explored. Thank you.

Marc Trachtenberg: Marc Trachtenberg from the IPC. I have an example of a compliant situation which was resolved by compliance which I think is maybe a better example. I understand that for something that's ongoing, it's maybe hard to comment but here's a situation which was resolved. For the TLD dot website

in Chinese - which I can't pronounce the word but it's basically dot XN--FES554G right? It's essentially dot website in Chinese.

What this registry operator KNET did was they (unintelligible) with their subsidiary registrar and they essentially - this company, KNET, is the operator of internet keywords in China which basically are dot list domain names in China which are operated by the Chinese government. They took this entire database of internet keywords and just dumped that into the registry so they registered thousands of domain names with - that were never asked to be registered with completely manufactured contact information and basically locked out all of the registrars from having any access to their system.

We reported this to compliance multiple times, filed the formal compliance report, had to follow up multiple times months and months and months and at the end of the day, the ultimate result is check the who is you'll probably see that the domain you complained about and others are no longer there. Not any information on remediation or any actual steps that were taken by compliance but simply just "look at the domain names you complained about and they're not there anymore."

That's not acceptable. I mean I can't think of a more blatant and willful violation of registry and registrar obligations. I mean I never heard anything worse and so now when I have to go back to my client and tell them "Well ICANN's not really telling us what they did. They just said that those domain names are not there anymore."

That's not really acceptable and I use that as a powerful example, but it just typifies the compliance process. When you make a compliance complaint, you are never provided with any information about resolution. All you're told is that it was resolved, or that the registry or registrar contracted party took some

steps, not what those steps are and I recognize that to some extent you need to protect their confidential information, or maybe their trade secrets, or other information that could be sensitive to their business and I get that, but there has to be some sort of balance and there's no balance at all whatsoever.

The entire process is weighted in favor of the contracted party without providing any information or transparency to the person who's complaining even when it's acknowledged the complaint was valid because there had to be some sort of remediation and I think that's just generally completely unacceptable and there has to be more transparency. I don't think it's a valid response to say, "Well we need to have complete confidentiality because otherwise they're not going to be forthcoming." They have to be forthcoming.

You're compliant. You're enforcing the obligations in the contract. They have no choice but to comply with you. If they don't they can be terminated so to say that "we have to maintain complete confidentiality for them otherwise they're not gonna cooperate with us" I don't think that's true. They have to cooperate with you and I think myself and I think many others would like to see some concrete steps that compliance is gonna take to provide more transparency not on a general report level, but on an individual complaint level to explain to the complaining party and the public what steps were taken to remediate the problem and whether, in fact, there was a contract violation.

Jonathan Zuck: Thanks Marc. That's very helpful. All right. The other person I had a request from was Susie Kawaguchi. Please.

Susan Kawaguchi: Thanks. Susan Kawaguchi for the record. Could you put the slide up that I sent and while he's doing that, just a couple comments. I manage all the front line enforcement, domain name brand enforcement, marketplaces, page search, all of this for Facebook, Instagram and Whatsapp and some of our

additional smaller brands so as you can imagine, I feel like I'm on the front lines.

I'm battling and to protect our users because they're not gonna damage our brand. They are gonna cause issue for our users because people rely on our brands and in the instance with the dot feedback, that was one of our primary reasons for joining the Pick DRP is because there was an association with our brand that we had no control over and then a well-known scam is being perpetuated there but because of all the frontline enforcement I do, I can't - compliance is a last resort.

I try very hard to avoid ICANN compliance partly because I think there are ways of managing the issues without coming to compliance and then when all of those are exhausted, that's when I come to the compliance team. We file a lot of inaccuracy reports on who is and then initial one off compliance issues and with Kathy's example, I sort of wonder would ICANN compliance really be involved in that. They may be after the fact to sort of make all the parties figure out what went wrong, but when you can report to the hosting company and depending on the terms of service of the hosting company, they'll take things down and I can sympathize with this individual small business owner, but and not to find things out.

There are some times when you talk about collaborative and cooperative and transparent actions by compliance. In the past it felt that the only times the compliance team was cooperative, collaborative and transparent was with the contracted parties. I'm assuming that it was doing that with the contracted parties because it was not with me filing these complaints.

That's an issue - what I would like to do is going forward let's switch that around because I think we're all in this for the good of the internet - good of

ICANN being successful and I think we can help because we each have unique experiences out there and we can maybe put processes in so Kathy's client doesn't have that issue again.

They have a right to know what's going on with their domain name. Somebody should have reported this to them. On this example here with - this is the (Spom House) badness rating of the new GTLDs you'll see that - and I added the registry information to each of these TLDs, but of out of the top ten that are considered bad, Famous for Media is the registry operator for six of those so that's an indication - now an indication of just bad practices.

Maybe they don't quite know how to run their business or that go all the way to an intention of being "Yes. We're going to make as much money and we don't care how that money comes out" but Facebook is a large platform. We have 1.8 billion users so we're seeing the badness here. We're seeing our users report this. We're seeing campaigns just attacking our users on our platform so if we can't work collaboratively - if we can't come to you and say "Look this looks bad. It's probably bad. Let's look into it together. This is the information we have. What do you have and what are they saying" and give everybody an opportunity to work together on these issues.

Then I think we would make more progress for best practices units in the DNA and some of the acceptable use policies of the registries. Those are great. From my perspective, acceptable use policies at a registry. I avail myself of those all the time.

Facebook being such a big platform, Instagram, WhatsApp - we can take out own steps but it's sort of piecemeal and I think we need a very well-coordinated collaborative way to work on this together. We oftentimes do not have transparency as to even who is running these registries or

registrars. In some of research we've discovered that as we're looking - we've looked at two million domain names out of these - for Famous For Media registries and all of those are with one registrar.

Well lo and behold they're probably owned by Famous For Media so I mean there's some definite issues and so I would welcome ADHOC committee. I would welcome more transparency from the compliance office and just less confusion when you - because oftentimes you're left sitting there "Okay. They just closed the case. What do we do now" and then we have to get aggressive with you which is not fun. We don't want to do that. We'd much rather just sit down and have a really good conversation and go "Tell us what you can. Protect the privacy where it needs to be protected but don't do it at the expense of users on the internet."

Jonathan Zuck: Thanks Susan. That's also really helpful. Okay. We've got a couple of hands up in the room. I feel like I really gave short trip to Stephanie Perrin. Jamie, if you can kind of commit to answering the questions that she left on the chat because I think they're going to take some more consideration on your part, but I don't want us to ignore them completely. I just don't think that (unintelligible) was here for you to answer them.

If you can commit to answering them offline that would be great.

Jamie Hedlund: I can commit.

Jonathan Zuck: Thank you. Vicky, or?

Vicky Sheckler: Just really quickly to continue with what Susan was saying. It would also be really helpful and maybe it's there and I haven't seen it I'm sorry - to know

the relationship between the registrars and the proxy services because I think having more of that information would help with (unintelligible).

Marc Trachtenberg: Marc Trachtenberg from the IPC. Just one additional question which I actually wish I'd asked earlier which is is ICANN at all looking - or is compliance looking at all whether registries are following through with the commitments they had in their applications because it seems that there's no monitoring of this at all whatsoever. There's no coordinated effort by compliance.

On the front end, everyone was informed that whatever you put in your application, you're bound by, but now in practice, it seems like the complete wild west where registries are able to do anything they want and whatever was in the original application is completely irrelevant and I mean I guess maybe potentially you could address some of that in a Pick DRP possibly - that's not even clear but regardless, it shouldn't be the responsibility of the community generally to enforce this when there's a compliance department which is there for that purpose and so you may not know right now.

You probably don't, but if you could commit to getting back to us on whether ICANN has looked at this at all whatsoever and if not, you know what steps they're going to take to look into this and assure that registries are following through on the commitments they made in their applications.

Jonathan Zuck: Sure. Happy to follow up on that. Any other questions for Jamie that are transactional and less philosophical? Yeah go ahead.

Man: (Unintelligible) from (unintelligible). Did I understand correctly that complaints can be made anonymously in a way that - only that a registrar know who made the complaint? Is there any abuse process? What are the

different cases for making a complaint - for there - like three cases only on which basis one can file complaint in the finish CCTLD. Is it really possible that a domain can be shut down without the registrant getting any warning whatsoever? That's what - those are my questions.

Jonathan Zuck: Okay. I'm unsure I quite got all of that but I got the last one was can the domain of a registrant be shut down without any notice and the you wanted to know the steps for enforcing? Is this all in the context of a CCTLD?

Man: No. Just any domains. I brought in the finished CCTLD because there are only three cases under finished CCTLD you can make a complaint - only three. One is protected name, one is trademark and the third is what is it? Anyway they were very specific and I don't know - I heard of a case where a registrant was missing a phone number from the application of a domain that had been registered and used for quite a while and then somebody made a complaint - doesn't even know who did it and it shut down because missing phone number.

Woman: Question for him.

Jonathan Zuck: Go ahead.

Woman: I mean - there is an inaccuracy report for GTLDs in general, but you have to fill out who you are, but I do not think there is any sort of compliance and I mean do you go out and check who - if this person is actually who they are. It does have to go back to an email address.

I'm very familiar with that process so you would have to have some sort of email address to confirm that you placed that, but I think the bigger issue is there's a lot of actions you can take against a domain name that does not

involve a registrar and the registrar and the registry is the only thing that ICANN compliance is going to be responsible for so I think we need to separate those issues and only focus on the ones that Jamie can actually control.

I mean if it's an IFP, I report domain names - infringing domain names all the time to ISPs and say "Please review your own terms of service." You would think in that ISPs terms of service that that registrant has signed onto that there would be a notification section, but I don't think I can have the role in making sure that the ISPs notify. I'm not sure who has that role. Maybe I'm wrong too. I don't know, Jamie, do you have a role there?

Jamie Hedlund: Not with an ISP or a web hosting. There are obligations on the registrar to get in touch with whoever, but beyond that there's - in addition, with the acceptable use policies in particular, registries and registrars can take action that have nothing to do with the ICANN contract and for reasons that have nothing to do with what's in the contract.

Jonathan Zuck: Thanks. Phil Corwin. I'm sorry. I guess that we can conclude that the chair should move up to the head of the table because I've been missing you the whole time so I apologize, Phil, go ahead.

Phil Corwin: Yeah. Thank you, Jonathan, and actually I was gonna suggest - nothing personal against you - but that anyone running any of these sessions should probably sit at the head table so they can see anyone who might want to participate.

The question I have for Jamie, so far we've been talking about registries and registrars. I'm one of the co-chairs of the working group that's reviewing rights, protection mechanisms. Kathy Kleinman, one of the co-chairs is here.

Sometime next year we're gonna start looking at the UDRP and I think one of the charter questions whether UDRP providers should be subject to some standard agree - what I can and I would note that the business constituency has been on record for several years that this should be that type of standard agreement to assure uniform administration of what's supposed to be uniform policy but before we get to UDRP, we're gonna be getting to the URS and the URS providers are subject to a rudimentary contract with ICANN

A memorandum of understanding and I'm sure our working group will be looking at that MOU and what's in it and whether there's - the providers are in compliance with it. My question is if - and I'm not saying there's any problem right now because we haven't even looked at it - but if one were to feel that a URS provider was acting in a way that was non-compliant with that MOU, would a person concerned by that bring that concern to you as head of compliance or would we be directed somewhere else to the office of general counselor or someone like that. Who's got the responsibility in ICANN for overseeing that MOU with the URS providers? Thank you.

Jonathan Zuck: Thanks Phil. I'll have to go and check that out and get back to you.

Phil Corwin: Fair enough.

Jonathan Zuck: All right. We're out of time for this session. Thanks everyone for your participation and please join me in wishing Jamie good luck and good fortune in his new role. All right. Thanks, Jamie, for coming.

Jamie Hedlund: Thank you all.

Rob Hoggarth: Ladies and gentleman. We're gonna get started right on the next session. We have to take a short break to reset the phone lines and the recordings. Based upon what -

END