

New gTLD Subsequent Procedures Request for Data - Vertical Integration
Email to Compliance@icann.org from Steve Chan on 19 May 2017

1. Has Contractual Compliance received any complaints about and related to vertically integrated entities?

Yes, ICANN Contractual Compliance has received complaints about both vertically integrated registry operators and registrars. However, those complaints which are related to the contracted party's vertical integration have been limited to registry operators.

Registry operators are required to comply with the Code of Conduct in Specification 9 of the registry agreement (RA), which imposes certain requirements related to registry operators' related entities (among other things), and Section 2.9 of the RA, which requires registry operators provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement (RRA) for the top-level domain (TLD) and notice to ICANN about its Affiliates.

Registrars are required to comply with Section 3.21 of the 2013 Registrar Accreditation Agreement, which imposes certain requirements related to registrars affiliated with registry operators.

ICANN Contractual Compliance has a dedicated Code of Conduct complaint web form at <https://forms.icann.org/en/resources/compliance/registries/code-of-conduct/form> . Through that complaint form, ICANN receives complaints from external complainants, including Internet users and registrars, related to registry operators' compliance with the Code of Conduct in Specification 9 of the RA.

ICANN has also received complaints related to the above-referenced provision in Section 2.9 of the RA. These complaints are processed in the "Registry Other" complaint type.

a. If so, have any been determined to have a foundation?

Yes, some of the complaints received by ICANN about vertically integrated registry operators have been confirmed as in scope of the RA. These complaints are forwarded to the registry operator for purposes of addressing the complaint and providing ICANN with information sufficient to demonstrate compliance with the Code of Conduct in Specification 9 and Section 2.9 of the RA.

b. If so, are there any statistics or other information you might be able to share?

ICANN has processed less than ten complaints against registry operators as it relates to their compliance with the Code of Conduct in Specification 9 and Section 2.9 of the RA.

Metrics regarding these complaint types are reported in the Performance Reports at <https://features.icann.org/compliance> .

Additionally, ICANN performs proactive monitoring of registry operators' compliance with the Code of Conduct via its annual review of Registry Operator's Annual Certifications of Compliance with Specification 9, Code of Conduct Exemptions and Specification 13. See a summary of this effort in the 2017 Contractual Compliance Quarter One Report at <https://www.icann.org/en/system/files/files/compliance-update-mar17-en.pdf> . Of the approximately 750 new gTLDs that ICANN reviewed during the 2017 effort, 197 gTLDs were subject to the Code of Conduct's Annual Certification requirements and nine gTLDs received related Compliance inquiries. These nine inquiries, which have now been resolved, focused on ensuring compliance with the Certification's signatory requirements and the provision of the results of the registry operators' annual internal reviews.

There have been no registry operators that have been unable to demonstrate compliance with the Code of Conduct or Section 2.9 upon request or after remediation.

2. In performing audits of registries and registrars, is vertical integration an element of the reviews?

Yes, vertical integration is an element of ICANN Contractual Compliance's audit program for both registrars and registry operators. Compliance with the Code of Conduct in Specification 9 and Section 2.9 of the RA are tested in the registry audit. Additionally, Section 3.21 of the 2013 Registrar Accreditation Agreement is subject to testing in the registrar audit program.

If so, are there any statistics or other information you might be able to share?

Contracted parties that have been audited to-date have demonstrated compliance with the above-referenced provisions upon request or after remediation.

Information regarding audit findings are published in the Audit reports displayed by year at <https://www.icann.org/resources/pages/compliance-reports-2017> .