

WS2 Jurisdiction

Discussion on OFAC

Samantha Eisner, Deputy General Counsel

WS2 Jurisdiction Meeting
1 August 2017



Agenda

- ⊙ What is OFAC?
- ⊙ How did it become applicable to ICANN?
- ⊙ Would ICANN be subject to OFAC if it were not headquartered in CA/US?
- ⊙ Do ICANN's registry and registrar agreements specifically require OFAC compliance?
- ⊙ How are ICANN's contracted parties subject to OFAC?
- ⊙ Can ICANN become exempt from OFAC?

What is OFAC?

- Office of Foreign Assets Control, part of the U.S. Treasury Department
- Created in 1950
- Mission: Administers and enforces economic sanctions programs primarily against countries, and groups of individuals, such as terrorists and narcotics traffickers
- In general, OFAC has country-specific programs as well as the Specially Designated Nationals (SDN) list of individuals and companies with which U.S. persons are general prohibited from dealing
 - Entities on the SDN list may be from a broader range of countries than are included in the country programs
 - Country programs apply whether or not the person (individual or entity) is on the SDN list
- U.S. is not the only country with systematic embargoes (E.g.: Japan, UK, EU (Common Foreign and Security Policy of the European Union Sanctions Policy); Switzerland (International Sanctions Act)).

What is OFAC?

- In general, OFAC prohibits providing goods and services to countries under sanction and those persons and entities on the SDN list.
- It applies generally to those who fall under the jurisdiction of the U.S. (such as businesses in the U.S. (or with a significant business presence here); U.S. citizens, etc.)
- What if companies don't comply?
 - Fines
 - Criminal liability
 - Civil liability

How did it become applicable to ICANN?

- ICANN, by virtue of doing business in the U.S. and having a place of operations in the U.S., has been obligated to comply with OFAC rules since its formation.
- The IANA Functions Contract with NTIA did not add to ICANN's OFAC requirements
- No change since the transition

What if ICANN wasn't headquartered in US?

- The amount of business contacts that ICANN has with the U.S. would probably still put ICANN under U.S. jurisdiction for the purposes of OFAC

Registry and Registrar Agreements

- Do ICANN's registry and registrar agreements specifically require OFAC compliance?
- No. ICANN's agreements require that contracted parties follow their applicable laws. What laws apply to a contracted party are not for ICANN to decide – those are individual legal compliance issues for each company.

Registry and Registrar Agreements

- How are ICANN's contracted parties subject to OFAC?
- OFAC applies to those under U.S. jurisdiction. It is up to registries and registrar to determine if they are subject to OFAC compliance.
- Example: A report about a registrar unable to registrar a domain name due to OFAC issues is about the registrar's legal compliance requirements. ICANN does not mandate which laws the registrar needs to follow.

Can ICANN become exempt from OFAC?

- Companies do not become uniformly exempt from following sanctions regimes
- Through general licenses, often in regulation or legislation, the U.S. can choose to exempt certain kinds of conduct/types of transactions
 - E.g.: Through specific licenses, an entity can apply for authorization to engage in a particular kind of conduct or transaction
- OFAC is not required to grant specific licenses
- ICANN will not provide goods or services to any country for which sanctions apply or for any person or entity on the SDN list unless a general license exists that would exempt such conduct OR unless ICANN is granted a specific license.

Engage with ICANN



Thank You and Questions

Visit us at icann.org

Email: email



[@icann](https://twitter.com/icann)



facebook.com/icannorg



youtube.com/icannnews



flickr.com/icann



linkedin/company/icann



slideshare/icannpresentations



soundcloud/icann