



27 January 2019

Krista Papac  
Complaints Officer  
ICANN

Dear Krista,

Thank you for your letter of 21 December 2018, responding to the RySG complaint of 19 November 2018 regarding the DNS Infrastructure Abuse Registry Audit Request for Information (RFI) issued by ICANN Contractual Compliance to all registries.

The RySG is disappointed with the conclusion reached by the Complaints Office.

In order to develop the RFI, it is reasonable to assume that ICANN compliance reviewed the various types of registry agreements—of which there are four primary types with few variables—and developed the RFI questions. The assumption that ICANN would have to create over 1200 RFI's is inaccurate, and the notion 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., is not a defensible reason for not doing so. This is not a question of what is operationally feasible, but rather what is the appropriate methodology for conducting an audit in accordance with ICANN Compliances remit and the provisions in the registry agreement.

While your response states "... if a registry operator believes 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 ..." this was not explicitly stated by ICANN Compliance when they issued the RFI nor did ICANN Compliance state this to be the case during the two webinars. We also note that the online form that registry operators were requested to use to respond to the RFI did not allow for that option.

Further, your response states that a primary focus of the dispute is "differing interpretations regarding the audit language contained in the various registry agreements." That is not correct. Registries did not offer an interpretation of any contract language. Rather, we directly quoted the language in the Registry Agreements setting forth the limitations of ICANN's audit rights (limiting audits to compliance with two specific articles in both the new TLD Agreement and the legacy agreements). Compliance has not offered any alternative "interpretation" of those contractual limitations. Instead, Compliance seems to be trying ignore them because it finds those limitations too restrictive.

As we noted in our complaint, because the RFI was issued by ICANN Compliance it implies an inherent threat of enforcement action if the questions are not answered. For your statement to be true, ICANN Compliance should have explained that the questions in the RFI were developed to address the varying terms contained in all registry agreements and as a result some of the questions contained in the RFI will not be relevant to all registry operators. In those instances the registry operator has the ability to indicate that the question is not applicable to their registry agreement. Then, as you correctly note, if there is a disagreement between the two parties regarding applicability of one or more questions – the disagreement can be discussed as envisaged throughout the audit process.

Yours sincerely,

*D Austin*

Donna Austin  
Chair, RySG