

New gTLD Subsequent Procedures Request for Data - Public Interest Commitments (PIC)
Email to Compliance@icann.org from Steve Chan on 1 June 2017

(i) How many official PIC complaints have been filed with compliance?

Registry operators are required to comply with the Public Interest Commitments (PIC) in Specification 11 of their respective registry agreements (RA). These commitments vary by top-level domain (TLD) and can include both voluntary commitments made in the registry operator's TLD application and mandatory commitments, both enforceable through the PIC Dispute Resolution Procedure (PICDRP) at <http://newgtlds.icann.org/en/applicants/agb/picdrp-19dec13-en.pdf>.

ICANN Contractual Compliance has a dedicated PICDRP complaint web form at <https://forms.icann.org/en/resources/compliance/registries/picdrp/form>. Through that complaint form, ICANN receives complaints from external complainants related to registry operators' compliance with the PICs.

Additionally, ICANN has proactively processed a small volume of complaints regarding registry operators' compliance with Specification 11, Section 1, which requires that registry operators use only registrars accredited by ICANN via the 2013 Registrar Accreditation Agreement (RAA) to register domain names.

In 2014 ICANN also launched a focused proactive effort of assessing registry operators' compliance with Section 3b of Specification 11, which requires registry operators to periodically conduct technical analysis to assess whether domains in the TLD are being used to perpetrate security threats (such as pharming, phishing, malware and botnets) and maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Details regarding this effort can be found in ICANN's prior newsletter at <https://www.icann.org/en/system/files/newsletters/compliance-update-dec14-en.pdf>.

ICANN processed no PICDRP compliance matters in 2013. Between 2014-2016, ICANN processed 278 compliance matters using the PICDRP complaint type. Of those matters, 249 were in-scope of Specification 11 and forwarded to the registry operator. The majority of these matters were related to the proactive effort noted above. One of these matters was a third-party complaint processed under the PICDRP. The remaining 29 complaints were closed as invalid before being forwarded to registry operators.

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

There have been no registry operators that have been unable to demonstrate compliance with the PICs upon request or after remediation.

ICANN also proactively tests registry operators' compliance with Specification 11 requirements in the RA audit program. Registry operators that have been audited to-date have demonstrated compliance with these 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> .

(ii) What was the nature (in general) of those complaints?

ICANN has received two complaints from external reporters that were forwarded to registry operators as in-scope of Specification 11 and addressed using the PICDRP. These complaints were related to Sections 3a and 3c of Specification 11.

Section 3a of Specification 11 requires registry operators to include a provision in its Registry-Registrar Agreement (RRA) that requires registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.

Section 3b of Specification 11 requires registry operators to operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.

(iii) How many complaints did ICANN find some merit in and what was done?

The PICDRP defines the steps which the parties to the complaint must take to resolve it. If unresolved, ICANN may choose at its discretion whether to review the matter, invoke the use of a PICDRP Panel or take no action.

Through the PICDRP, ICANN allows for the submission of an initial report claiming that a registry operator may not be complying with one or more of its PICs. ICANN will conduct an initial review of the complaint to ensure that it is complete, has a claim of non-compliance with at least one PIC, and the reporter is in good standing. If the report passes the initial review, the complaint will be sent to the registry operator. If the reporter does not believe the registry operator has resolved the complaint within 30 days, ICANN may forward the complaint to a panel of experts to determine whether there is noncompliance.

The decision to invoke a standing panel is determined on a case-by-case basis and may vary depending on the complexity of the alleged violation(s), potential impact on community, size of the registry operator, which PIC(s) are allegedly violated, how the allegations relate to ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems, and other factors that may be raised by the PIC report or registry operator's responses, as applicable.

To date, ICANN has invoked the standing panel in one of the two valid PICDRP complaints. The panel returned with a finding of noncompliance for the registry operator involved. Per the PICDRP, when this occurs, ICANN notifies the registry operator via an enforcement notice. All enforcement notices are published at <https://www.icann.org/compliance/notices> . This matter was resolved by the registry operator.

The other valid PICDRP complaint was resolved in the Informal Resolution phase of the ICANN Contractual Compliance approach and process (see <https://www.icann.org/resources/pages/approach-processes-2012-02-25-en>) and therefore, is not subject to publication.

(iv) How many complaints did it not find merit in and were appealed to a PICDRP, if any?

Complaints that are determined to be out of scope of the PICs are closed before being forwarded to the registry operator and are not subject to the PICDRP. There is no mechanism for reporters to directly appeal to a PICDRP Panel. However, both reporters and registry operators may avail themselves of ICANN's various accountability mechanisms to address the outcome of these complaints.

(v) If it was not appealed to a PICDRP, why not?

See prior response.

(vi) How many PICDRPs were filed and what was the result?

See response to (iii) above.

(vii) Of the "successful ones" what happened in the end?

See response to (iii) above.

ICANN is in the process of updating the current complaint and reporting systems to enable enhanced granularity in reporting on the complaint types, including by legacy and new gTLDs. As a result of that, ICANN plans to publish this information on ICANN.org, along with the information provided to this Working Group in May 2017 following its request for information regarding compliance matters related to vertical integration. Target completion of this effort is July 2017 timeframe.