**REPORT OF THE COMPLIANCE DASHBOARD REVIEW SUB TEAM**

**22 AUGUST 2016**

ICANN Compliance provides regular public reports on the numbers and results of their investigations relating to enforcement of Registry Operators’ and accredited Registrars’ contractual obligations pursuant to either the Registry Agreements or the Registrar Accreditation Agreement (RAA), as applicable. These reports are uploaded to and viewable at: <https://features.icann.org/compliance>. Monthly, quarterly and annual reports (dating from 2006 to the present) are also provided at: <https://www.icann.org/resources/pages/compliance-reports-2016-04-15-en>. In addition, enforcement notices sent by ICANN Compliance to specific Registry Operators and Registrars, and detailing compliance action (e.g. suspension or termination), are logged at: <https://www.icann.org/compliance/notices>. Compliance also provides regular updates to the ICANN community, including at ICANN Public Meetings.

The Compliance Dashboard Review Sub Team looked at a number of monthly and quarterly reports and found the following points to be of potential interest to the RPM Review Working Group:

**(1) Registrar Suspension for Cybersquatting:**

In 2015, ICANN suspended the ability of a particular registrar to create new Registered Names and to initiate inbound transfers of Registered Names for 90 days. The registrar in question was OpenTLD, and the suspension was triggered by its engaging in a *“pattern and practice of trafficking in or use of domain names identical or confusingly similar to a trademark or service mark of a third party in which the Registered Name Holder has no rights or legitimate interest”* (prohibited by Section 5.5.2.4 of the 2013 RAA) (the suspension notice was posted at: [https://www.icann.org/en/system/files/correspondence/serad-to-zuurbier-23jun15-en.pdf)](https://www.icann.org/en/system/files/correspondence/serad-to-zuurbier-23jun15-en.pdf%29).

Notes:

* Section 5.5.2.4 of the 2013 RAA does not appear to have a corresponding parallel in the 2009 RAA, and thus may have been a new substantive ground for termination or suspension that was inserted during the 2011-2013 negotiations for the 2013 RAA between ICANN and the Registrars’ Stakeholders Group[[1]](#footnote-1), and resulting from the prior work of the ALAC-GNSO RAA Drafting Team[[2]](#footnote-2).
* However, the Sub Team’s initial review has not found any documented discussions or papers that specifically link Section 5.5.2.4 of the 2013 RAA – cybersquatting by a *registrar* - with the development of the substantive criteria for second level infringement by a *Registry Operator* in the TM-PDDRP[[3]](#footnote-3), which criteria has remain unchanged from early (2010) versions of the TM-PDDRP.
* The Sub Team notes further that OpenTLD’s conduct for which it was suspended related to its loss of two UDRP cases concerning its cybersquatting on the trademarks of some of its competitors (i.e. other registrars).
* The Sub Team concludes that, based on the publicly available materials it has reviewed to date, this incident does not provide any evidence of registry behavior that may be covered by the TM-PDDRP.

**(2) Data from Compliance Investigation of Registry Operators[[4]](#footnote-4):**

The Sub Team reviewed quarterly reports from ICANN Compliance from January 2015 through June 2016 and found the following data:

* Apr-Jun 2016:
	+ 1 complaint about Claims Service, 2 complaints about the URS, 5 complaints about the RR-DRP[[5]](#footnote-5), 28 classified as Other
* Jan-Mar 2016:
	+ 1 Claims Services, 6 URS, 15 RR-DRP, 36 Other
* Oct-Dec 2015:
	+ 2 Claims, 2 Sunrise, 2 URS, 4 RR-DRP, 17 Other
* Jul-Sept 2015:
	+ 1 Claims, 3 URS, 12 RR-DRP, 41 Other
* Apr-Jun 2015:
	+ 1 Claims, 23 Sunrise, 11 URS, 2 RR-DRP, 13 Other
* Jan-Mar 2015:
	+ 5 Sunrise, 11 URS, 7 RR-DRP, 71 Other

Notes:

* ICANN Compliance publishes all its enforcement notices such that the registrar or Registry Operator concerned can be identified as well as the cause for the applicable suspension, termination or other enforcement action. However, this is not the case for complaints filed, where no details about the nature of a specific complaint are provided in the Compliance reports or Dashboard.
* While this may be understandable in relation to ongoing investigations and possibly also complaints that are ultimately found to be without merit, the lack of detail makes it difficult for the community to evaluate the full extent of actual and potential errant registry behavior. The Working Group may therefore wish to consider requesting additional information about the cases noted above (especially for those complaints categorized as “Other”), if it considers this data relevant to its work at the appropriate point of this PDP and subject to any confidentiality restrictions from Compliance regarding specific incidents and persons.
1. The background to, notes and prior drafts of the 2013 RAA can be found at: <https://community.icann.org/x/MQXPAQ>. [↑](#footnote-ref-1)
2. The RAA-DT published its Final Report in October 2010, in which preventing cybersquatting by registrars was listed as a High Priority Topic and thus included in the 2013 RAA negotiations. The RAA-DT Final Report can be viewed at: <http://gnso.icann.org/issues/raa/raa-improvements-proposal-final-report-18oct10-en.pdf>. [↑](#footnote-ref-2)
3. This requires that there be affirmative conduct on the part of a Registry Operator of *“a substantial pattern or practice of specific bad faith intent by the registry operator to profit from the sale of trademark infringing domain names”*, and *“bad faith intent to profit from the systematic registration of domain names within the gTLD that are identical or confusingly similar to the complainant’s mark, which: (i) takes unfair advantage of the distinctive character or the reputation of the complainant's mark; or (ii) impairs the distinctive character or the reputation of the complainant's mark, or (iii) creates a likelihood of confusion with the complainant's mark.”* [↑](#footnote-ref-3)
4. Compliance also investigated complaints against Registry Operators concerning alleged violations of the Registry Code of Conduct and a Registry Operator’s Public Interest Commitments (PICS). However, the Sub Team concluded that for the former, the scope of the Code of Conduct does not address problems arising from RPMs and, for the latter, any relevance of a PIC to RPM review would depend on the specific nature of that PIC from that Registry Operator (note that 499 PICS were submitted to ICANN in 2013). [↑](#footnote-ref-4)
5. The Sub Team is including numbers for complaints under the Registry Restrictions Dispute Resolution Procedure (RR-DRP) to show that while these Procedures do not involve ICANN as a party (being proceedings brought by a complainant directly against a Registry Operator), nonetheless it would seem that ICANN Compliance can and does receive complaints about registry conduct that would otherwise be determined under a specific Dispute Resolution Procedure that is not administered by and does not involve ICANN. [↑](#footnote-ref-5)