Proposed changes suggested by Kavouss Arasteh are in this color

Other proposed changes are in this color.

**RECOMMENDATIONS REGARDING OFAC AND RELATED SANCTIONS ISSUES**

**\*\*\***

**Application of OFAC Limitations by Non-US Registrars**

Proposed addition:

There are several reports in the media that US-Based and Non-US registrars have asked registrants to transfer out their domains immediately because they might get affected by US sanctions.

Examples of that are related to Godaddy[[1]](#footnote-1) and Online Nic,[[2]](#footnote-2) which made pressure against registrants having citizenship of Sanction countries.

**\*\*\***

***Recommendation***

\*\*\*

Proposed addition:

Registrars should be reminded that they should not normally examine zero risk policy in regard of penalties imposed by OFAC.

Discussion:

1. A prior version of these proposed changes was suggested by Kavouss on September 18, by inserting a paragraph at the end of the General License Recommendation that read:

What criteria should be used / considered to be used to determine / categorize that the studies carried out by ICANN to get general license(s) are inappropriate. Generally, ICANN must pursue the application for general license at earliest time and should advertise and communicate with registries and registrars to revise their registrant agreements and not to copy and paste the general agreements found in US-based registrars. The role of ICANN, to make awareness about such situation is critical and should not be undermined. There are several reports in the media that US-Based and Non-US registrars have asked registrants to transfer out their domains immediately because they might get affected by US sanctions. Samples of that are related to Godaddy and Online Nic, which made pressure against registrants having Iranian citizenship. To determine the nature of registrant, registrars usually refer to Admin contact details recorded in whois database. If admin address and phone number is related to sanctioned countries, it is assumed that domain owner is a hidden risk for the registrar, therefore registrars try to examine zero risk policy in regard of penalties imposed by OFAC.

1. Discussion during meeting.
2. After the call, Paul Rosenzweig wrote [note: portions obsolete]:

Given the lateness with which we received Kavouss’s suggested paragraph and revisions and the fact that I, regretfully, could not make the call, let me note my disagreement with two aspects of it:

First, on page 5, it is suggested that a survey be undertaken to “prove” that non-US registrars are imposing OFAC requirements.  Since the point of the survey is to determine what is true, it is premature to assume that it will “prove” the facts assumed by the proposer.  The word “prove” is therefore in error and should be replaced by “determent whether”

Second, I oppose the proposed new paragraph at the end simply because, as written, I have absolutely no idea what is meant.  But use of terms like “must” as an imperative are always inappropriate in recommendations.  Insofar as I can discern the intent (that there is some action being taken by registries against registrants) that issue is a new one that needs to be fully discussed and it is, of course, quite different from the OFAC general license idea for ICANN that we have been discussing (which would only relate to ICANN’s on RAA agreements).

1. Kavouss replied:

Thank you very much for your comments

I am open to soften the text as you suggested e.g. to replace " prove " by " determine" and the term"must" be a less stronger term such as" need" which is between must/ shall/ and may

However, due to the fact that we are severely affected  by the process, may I humbly request you to kindly agree to retain the idea with slightly modified text to also be agreeable to you.

I am jerky awaiting to receive your fair suggestion as soon possible

1. After considering Kavouss’s suggested text, I edited the document and sent the following email:

I wanted to reflect in this email thread how the various topics in the paragraph submitted by Kavouss for potential inclusion in the "General License" recommendation have been dealt with in the document.  Here are the different sections of the text, followed by my notes in italics.

Generally, ICANN must pursue the application for general license at earliest time and should advertise and communicate with registries and registrars to revise their registrant agreements and not to copy and paste the general agreements found in US-based registrars. The role of ICANN, to make awareness about such situation is critical and should not be undermined.

*This is now covered in the section on General Licenses, so this is not needed here.*

There are several reports in the media that US-Based and Non-US registrars have asked registrants to transfer out their domains immediately because they might get affected by US sanctions.

*This is not related to General Licenses, so it should not be included in that recommendation.  Regarding non-US registrars: This issue is generally discussed in the section "Application of OFAC Limitations by Non-US Registrars." If the Subgroup receives media reports of non-US registrars taking such actions and it appears there may be no legal basis for these actions, we could cite them in this section.  Since the Subgroup has not seen the reports mentioned here, we do not have any basis to include this sentence, and so it is not included.*

*Regarding US registrars, who have OFAC compliance obligations, there does not appear to be an issue that falls within the purview of the Subgroup.  It may well be that these registrars are complying with their legal obligations (or seeking to become compliant with their legal obligations).*

Samples of that are related to Godaddy and Online Nic, which made pressure against registrants having Iranian citizenship.

*These are both US-based registrars, who are required to comply with OFAC sanctions. As noted above, it may well be that these registrars are complying with their legal obligations (or seeking to become compliant with their legal obligations). This does not fit with the issue discussed in this report, which relates to mistaken application of OFAC sanctions by non-US registrars, so it is not included.*

To determine the nature of registrant, registrars usually refer to Admin contact details recorded in whois database. If admin address and phone number is related to sanctioned countries, it is assumed that domain owner is a hidden risk for the registrar, therefore registrars try to examine zero risk policy in regard of penalties imposed by OFAC.

*This is not related to the General License either.  This seems to be directed toward registrars’ business practices and business judgment.  Without commenting on the validity of the issue, this would not appear to be an issue for this Subgroup or the CCWG.  Furthermore, if these are registrars with OFAC compliance obligations, then it may well be that these registrars are complying with their legal obligations.  If these are non-US registrars without OFAC compliance obligations, then this issue is covered generally under "Application of OFAC Limitations by Non-US Registrars."  As such the paragraph is not included.*

1. Kavouss replied:

Tks for the doc.

Surprisingly I saw that that you have unilaterally removed the last paragraph that I have added and commented by Paul Rosenweig

As I mentioned we can soften the langauge such as replacement of "MUST" by "should" as well as few other area to soften the language but I do not agree that you reomove that entire paragraph since somebody did not like that.

This is a multistakeholder approach and view of everybody must be taken into account.

Consequently there is no consensus in the draft you have declared as finalized pls reconsider the matter.

1. Kavouss replied again approximately 30 minutes later:

TOP URGENT

I disagree with your course of action removing the pargraph that was included in the final draft.

We have not made such decision for  removal

One participant who was not attending the 16 Sept later on did not like the language but he did not proposed its removal

Moreover, based on comments reveived after the meeting you were not authorized to unilaterlly remove a paragraph which was included -

If the language in that pargraph to be softened , I am reay to discuss that but not unilateral removal of the full paragraph.

Your authority is limited to conduc the meeting but bnot to decide for evry b ody.

Pls immediate re insert that pargraph and either redicuss it or send it to CCWG Plenary

1. Jorge Cancio then wrote:

would it be possible that Kavouss' concerns are addressed by you also bilaterally as he seems not to be satisfied with these explanations, This could help avoiding any misunderstanding?

I feel we are very close to consensus and such an effort would most probably be helpful in order to allow all to be on board.

1. Kavouss then replied for a third time, approximately 90 minutes after his second reply:

In order to facilitate the work of CCWG pls kindly reconsider the position that you have taken to duly take into account the content of last pargraph -Should you wish to slightly soften that, pls suggest text.

However, I have serious difficulties if you remove that

Pls kindly appolgize for such request at this stage but we need to work together

We need to respect each one's views

We should not limit ourselves to some counter proposal ,in particular, if those counter proposals have not been discussed by the group

1. Thiago then wrote:

I add my voice to Jorge's suggestion and look forward to an agreeable solution.

1. Kavouss replied:

Deaar Thiago, Dear Jorge,

Thanks to your positive r3sponse .I am waiting for Greg to resolve the issue.

I strongly oppose to the  unilateral removal of the last paragraph as result of off line exchange of views between two or three individual.

We should be transparent

We should listen to each other.We should consider problems of others

1. Milton then wrote:

Sorry, Kavouss, in the interests of finalizing the statement in a timely manner I have to agree with Greg, that the last paragraph is no longer needed.

We do agree strongly with admonitions to registrars not to cut off their customers without warning but it is not so much an ICANN jurisdiction problem but a problem of the jurisdiction of the registrar (US) or a problem caused by the registrar’s own contract.

We do ask ICANN to clarify that registrars do not need to follow OFAC sanctions simply due to their contracts with ICANN, and that is important. Let’s not hold up the progress we have made by throwing too many things into the pot.

1. Kavouss replied to Milton:

I have with appologies to disagree with you and throw the monkies to the shoulder of thirs party

You are free to agree with Greg but I disagree with your argument

Vite fait mal fait .

We have to address the issue in one way or the other

Tks for your kind reconideration of your position to propose a workable solution

1. I then responded to the thread:

Kavouss et al.,

First, if you would explain how the suggested text, past the first two sentences, fits as part of a recommendation on the General License, that would be helpful.  The remaining suggested text is a series of claims that actions have been taken by US and non-US registrars to exclude registrants from sanctioned countries, without any recommendation text.  **How does this fit in General License recommendation?**  The suggested paragraph was put there, but it does not fit in that context.

To be clear, each recommendation section discusses actual actions to be taken by ICANN organization to resolve an issue if it accepts the CCWG recommendation, or that we would suggest other ICANN structures or stakeholders take to resolve an issue.   The remaining proposed text does not perform this function and thus seems to have no place as part of the General License Recommendation.

To the extent these claims relate to concerns about the activities of non-US registrars, they are addressed in the section discussing application of OFAC sanctions by non-US registrars who are not required to do so.  It was agreed on the call that this section would be focused on actual or apparent mistaken application of OFAC sanctions, with corresponding recommendations to resolve that issue.

We have never discussed an issue with regard to the activities of US registrars, who are required to comply with OFAC regulations. As such, mentioning activities of US registrars (or broadly claimed to be activities of all registrars) does not seem to be appropriate.

Second, if you would respond to and try to resolve the substance of the specific concerns I raised, that would be helpful.  Otherwise, there does not seem to be any substantive basis for accepting any of these suggestions.

I don't think it is helpful or accurate to describe this as a removal of text, as it was never accepted into the text in the first place.  It was a very late suggested addition to a document that has been worked on for a number of weeks, which was provided scant hours before the call.  Vite fait, mal fait, as you say.

To accept the remainder of the text into the document, the Subgroup would need to support:

* The idea that activities of US-based registrars raise a concern for this group to address, and that this group has accepted this concern as an Issue.
* That new Issues should be introduced to this document at this point.
* That issues should be put into the document without corresponding recommendations.
* That "media reports" should be cited in the document without being seen by the Subgroup.
* That the business and legal judgement of registrars, beyond the issue of mistaken application of OFAC sanctions, is an appropriate topic for this group and an issue that this group has agreed should be addressed in the document.

If there is broad support for these concepts in the Subgroup and if the concerns about the suggested text can be resolved, it would be good to hear it now, so the document can be revised appropriately.

1. Kavouss responded:

I read your comments

To clarify the matter and to some extent comply with your questions .I have prepared the following reply.

Pls kindly consider then favourable as they are now fitting the text either in the recommands part or in the preamble to the recommand

Regards

Kavouss

1.The last sentence reads” unless the results of the study demonstrate that it would be inappropriate for ICANN to pursue these licenses.”To this effect the first sentensce below “ what Criteria……inappropriate Because you qualify the study by being inappropriate and I did suggest what criteria will be use to make the judgement

Thus the first sentence would fir .You may include my comment by modifying the sentence as follows

UNLESS, USING APPROPRIATE CRITERIA, THE RESULTS OF STUDY DEMONSTRATE THAT IT WOULD BE INAPPROPRIATE FOR ICANN TO PURSUE THESE STUDIES.

2. Generally, ICANN  should pursue the application for general license at earliest time and should  remind the registries not to copy and paste the general agreements found in US-based registrars.

This also fits

3. The role of ICANN, to make awareness about such situation is critical and should not be undermined.

This part is talking about awareness that was extensively discussed and thus fits

4. There are several reports in the media that US-Based and Non-US registrars have asked registrants to transfer out their domains immediately because they might get affected by US sanctions

This could be included in appropriate part .if it does not fit with the recommends part

5.Examples of that are related to Godaddy and Online Nic, which made pressure against registrants having citizenship of Sanction coountries. This could be included in the introductory part of the OFAC sanctions and registrar

6 Registrars should be reminded that they should not normally examine zero risk policy in regard of penalties imposed by OFAC.

This could be included either in the recommends part or preamble of the recommend part

1. Kavouss then responded again, approximately 2 ½ hours later:

I replied to your message.

I modified that paragraph to fit in the text . I suggested to transfer part of the paragraph to the relevant part of the doc. I am waiting for that

Pls kindly be positive, contructive and objective and do not put obstacle in every suggestions made. This is not a private group and you MUST prperly act

1. After reviewing Kavouss’s emails and noting his revised suggestions and the lack of response to the questions I raised, I revised and recirculated the OFAC Recommendation.
2. Jorge responded to this email:

I see we are really close to the finishing line on this rec. As we are really talking about one footnote and a couple of edits, wouldn’t it be easier to number them and quote them in an Email to the Subgroup and request opinions from the Group?

Just suggesting…

1. I then responded directly to Kavouss, so that he would see that certain of his suggestions were incorporated in the revised text:

Thank you for your email, clarifying your earlier points.  This is very helpful.  I have incorporated certain of your points into the General License recommendation, so that it now reads (new language in red):

​ICANN should take steps to pursue one or more OFAC “general licenses” with the U.S. Department of Treasury in connection with DNS-related transactions.  Initially, ICANN should make it a priority to study the costs, benefits, timeline and details of seeking and securing one or more general licenses for DNS-related transactions.  ICANN should then pursue one or more OFAC general licenses **at the earliest possible time**, unless significant obstacles were discovered in the “study” process.

​

  If there are significant obstacles, ICANN should report them to the [empowered] community and seek its advice on how to proceed.  If unsuccessful, ICANN would need to find other ways to accomplish the ultimate goal -- enabling transactions between ICANN and residents of sanctioned countries to be consummated with a minimum of “friction.”  **It is critical that ICANN communicate regularly about progress toward securing general licenses, in order to raise awareness in the ICANN community and with affected parties.**

Thank you again for your input.  I hope you will agree that this is an appropriate way to take your concerns into account within the structure and focus of the Subgroup document   For a more detailed discussion, please see my inline responses below.

1. Kavouss responded shortly thereafter, on a different email thread:

Thank you very much.for the message.$

I am again surprised that you confused me and poerhaps othets.$

After your last message yesterday 21 Sept that the first two paragraphs of the added text by me may not fit , I proposed you another alternative to direcly include t various elements of the added text in pertinent part of the existing text . I have considerably softened the text

However,  you did not either read nor having any willing to consider that.

Pls note that you are kindly requested to take account of the modified texts and suggested the way on how take various element of that into account and send a revised version.$

1. I responded:

I responded to your suggestions a few minutes before your latest email.  I could not do so earlier, due to work obligations and religious observances.

I have distributed Word and PDF updates daily (nightly here) since our Monday call and will do so again momentarily.

1. Kavouss wrote on a different thread:

While I am reviewing those element you included in the recommands part, I did suggest to also include other parts of the suggested paragraph in the introductory and preamble part as amendedby me last night making them softened ,taking account of Milton's and Paul? s comments

If yes pls advise where ( in the introductory and / or preamble part of the documents) ) these other elements are included   .

1. Kavouss then replied to my prior email:

Happy religious holidays

Pls kindly look at my further messages

Sorry to disturbing you during your  holidays.

1. I responded:

As previously noted, I have responded in detail (twice) regarding the remaining elements of your suggested text.  Please read these responses.  I assure you it will take far less time to read them than it took me to write them.  Please reply to the points raised in these responses if you have any remaining concerns.

1. Meanwhile, Kavouss had sent another email (but not responding to any earlier email), basically repeating his lengthy email a couple of hours earlier, but starting a new thread.
2. I also responded to this email:

As previously noted, I have responded in detail (twice) regarding the remaining elements of your suggested text.  Please read these responses.  I assure you it will take far less time to read them than it took me to write them.  Please reply to the points raised in these responses if you have any remaining concerns.

1. Kavouss replied

Sorry to disturb you at your religeous feast .Pls kindly refer me to the area of the text when other elements sent to you few hours ago has bedn taken into account .Just few mints for you to highlight those, if considred as you know where they have been included and with what language which may not be exactly identical as proposed

1. I responded:

I have taken the remaining elements of your text into account and given them due consideration, but they are not included in the document, for the reasons I have twice set forth with great care and detail.  Please read my detailed explanations and respond to the substance contained in them if you have any remaining concerns.

1. Kavouss replied:

Pls indicate what do you mean by

I have taken the remaining elements of your text into account and given them due consideration

To this part I am ok but you continued

 but they are not included in the document,

What is the meaning of you have tajen into account but not included in the document

This is senseles confusing frustrating

Either you have taken them into acount thus they should have been included

Or if they were not included in the doc, the term " They have been taken into account " ids totally senseless

I do not know with what language I should talk to you

Do you speak French

Pls I am tired to be confused

I am spending hours and hours to concvinve you that these points should be addressed like two other examples that were included ( Netherland Antiles .... and .... )

I do not know why I am pushed to be confused.

You should not decide to reject them You are expected to be fair.$I kniow many of you do not intend to address point raised by some of us because you want to tailored the report in a way that satifsfy you.

Pls once again include them in one way or other

I am not convinced

1. I responded:

I await your response to the substance of my explanations.

1. Kavouss replied:

 have already replied

You have partially included my first and second points

But four other points are not incliuded either in the recommands parts or in the introductroy part or in preamble to recommands part

You said that you have taken them into account but you have not included them

What answr you expect from me

I humbly and respectfully ask you to include them in relevant parts of the documents see points 3-6 of my message to you

See below

*3. The role of ICANN, to make awareness about such situation is critical and should not be undermined.*

*This part is talking about awareness that was extensively discussed and thus fits*

*4. There are several reports in the media that US-Based and Non-US registrars have asked registrants to transfer out their domains immediately because they might get affected by US sanctions*

*This could be included in appropriate part .if it does not fit with the recommends part*

*5.Examples of that are related to Godaddy and Online Nic, which made pressure against registrants having citizenship of Sanction coountries. This could be included in the introductory part of the OFAC sanctions and registrar*

*6 Registrars should be reminded that they should not normally examine zero risk policy in regard of penalties imposed by OFAC.*

*This could be included either in the recommends part or preamble of the recommend part*

1. Farzaneh then wrote:

I believe the point 4 and 5 you are making is thoroughly discussed by the group and addressed by the below recommendation:

"ICANN needs to bring awareness of these issues to registrars. ICANN should clarify to registrars that the mere existence of their RAA with ICANN does not cause them to be required to comply with OFAC sanctions. ICANN should also explore various tools to remind registrars to understand the applicable laws under which they operate and to accurately reflect those laws in their customer relationships."

If we add the examples you are making, there will be a lot of interpretations about how and why these registrars applied OFAC and it will cause problems for the implementation of the recommendation. Especially because Godaddy is a US-based entity and is following OFAC not because of its contract with ICANN but because it has to as a US-based entity. I appreciate that you found these examples but I don't think they should be included.

1. Kavouss replied to Farzaneh, referencing the Resello “case” (the Dutch registrar who declined to enter into a reseller agreement with an Iranian national):

Thank you very much for your kind message

The case I sent to Greg is not a US Based

Registrar not a US National

The Registrar informed the Iranian national

residing outside Iran domain name reseller

That due to internal policy of his (Dutch based )

Office he does not to deal with that reseller

Pls kindly read my mail in which all details été

Provided

Pls also read Nigle reply

Thanks again for your kind comments which is highly appreciated

1. Farzaneh responded:

thank you Kavouss. I appreciate that you have found those examples. However, again in the case of non-US based registrars, it is not clear why they are adopting sanctions against Iran (or other countries) and in the examples, I made in this group, it is not clear why they had an "OFAC Clause" in their agreement.

But we came to a very good agreement. We don't have to find out the reason in this group, which is going to be burdensome. There is only one instance in which ICANN can help the situation and that is when the non-US based registrars follow OFAC because they wrongly have the impression that their contract with ICANN obliges them to do so.  Considering this, our recommendation covers the issue thoroughly. Inserting examples causes confusion.

(I think I have responded to the thread you are mentioning, thanks)

1. Kavouss replied:

Dear Farzaneh

Thank you again

Pls kindly point me toward the paragraph

That precisely cover thus point.

Yes there is some hint the doc. But

1. This case should be  included (like the two other cases )

And Mentioned in the introductory part

Of the document .

2. In the recommanda part the language is , to some extent)

Vague and needs to be more explicitly refers to

This and other similar case.

I have now raised the issue with James

Bladel, Steve Cricket and Goran

Marby, to reply to response according

to their respective roles and responsibilities.

I have copied to Co- Chairs knowing that

They will not reply as usual due to .,,,,,

Depending on their reply, I will escalate the matter

at other Forum in Abu Dhabi,

I will also file a formal complaint ON NON REPLY

OF  CCWG CO CHAIRS

1. I then responded:

You want us to include:

-- a reference to "reports from the media" (which the Subgroup has not seen) regarding unspecified "pressure" by US registrars who have OFAC obligations, when we have no Issue or Recommendation relating to actions by US registrars

-- a reference to a policy of a registrar located in the Netherlands, where the policy has no demonstrated connection to OFAC, US law, sanctions or ICANN's jurisdiction (in the US or elsewhere)

You think that James Bladel, Steve Cricket [sic] and Goran Marby should get involved in this and would agree with you

You think this needs to be escalated to "other Forum" in Abu Dhabi.

Why?  This is inexplicable to me.

1. Kavouss then replied:

Every thing is explicable to you Sir,

There are two distinct process

1. Investigation by ICANN the organisation

On whether a non UN National /Non US Based

 registrar refrain to be involved in a DND

Business with a reseller resident outside a country

Which is subject to OFAC while there is no

Direct/(indirect ) relation with OFAC Regulation

.

What is wrong with that?

Do you believe that I have no right to communicate

With ICANN Chairman of the Board and ICANN

CEO and chair of GNSO Council without

Your permission??!!!

2. An issue which a reseller  with Iranian National

Residing outside Iran has faced being

Denied by a registrar to have business  on the

Ground that ( they have an internal policy )

Which presumably connected with OFAC as

The Registrar being afraid of OFAC penalty

Inappropriately and contrary to the terms and

Conditions stipulated in RAA denied to get

Into business with that domain name reseller

This is a clear case that OFAC created a fear to every body

Around the world the NO DEAL WHST DO EVER

IS ALLOWED WITH PEOPLE OF IRAN .

Why you are so sensitive to this issue

Why you refrain to address that

This is a fact and reality .

Everybody  are afraid of OFAC penalty to deal

With people from OFAC sanctioned countries even if there

There NO Relation  of  the business in question

With OFAC

Why you are refraining to make reference to an actual

Case??

Are you also afraid of OFAC penalty to be imposed

To you ?!

**Policy of not Doing Business with Iranian Customers/Resellers (Unconnected to OFAC/Sanctions) by a Non-US Registrar**

An individual domain Name Iranian National reseller residing outside Iran sent a request to <sales@resello.com> in an online form, asking to become reseller of Domain Name in Iran (to sell domains to Iranian people).

He received the following reply:

Quote

“On Tue, Sep 19, 2017 at 9:48 PM, Resello Sales <sales@resello.com> wrote:

Dear reseller (XXX)

Unfortunately our policy restricts doing business with Iranian customers/resellers, even if they aren't living in Iran, but have an Iranian passport.

Kind regards,

Mark Assenberg”

It is worth mentioning that Resello is a subsidiary company for following holding:

Yourholding

Ceintuurbaan 28

8024 AA Zwolle

+31 38 453 0752

The name is Yourholding and they are based in Netherlands. So they are not US-Based company.

They do not want to explain why they don't want to provide service to Iranian. They say, they is our internal policy decision.

It is important to make it clear that none of Registrars and service providers which are not US Nationals or not based in USA cannot make internal policies to avoid giving services to a given citizens. This is a global business not a personal decision of a company or its managers. They must fully observe the expected behaviour and responses.

It is important to emphasize that non-US based companies should not to replicate the rules inside USA.

***Recommendation***

The group in attempting to address the case mentioned above thought that the above situation might have been arised as result of misinterpretation of applicability of OFAC Regulation to the case.

The Group concluded that there was no relation between the case and OFAC Regulation and its applicability.

The Group also did not find any provision in RAA to obligate the Resello to get into a business with the domain name reseller to provide the requested domain name did not find also any provision in the RAA to allow the registrar to reject / deny the request.[[3]](#footnote-3) The group therefore considered / recommends that there is a need that ICANN further examine the matter with a view to address the silent point in the RAA.

Discussion:

1. Kavouss introduced this proposed text on September 20, with the following introduction:

At the call on 13 Sept as well as on 18 Sept you asked to provide examples that NON US BASED Registrar should not replicate Rules established by OFAC in regard with request from registrant or reseller for domain name

Here is the example that you are looking for .

This is a real and actual case

1. Erika Mann replied as follows:

Dear Kavouss -

since this company is based in Zwolle/Netherlands, maybe they are responding to restrictions/bans setup by the European Union. One would have to check this.

<http://eeas.europa.eu/archives/docs/cfsp/sanctions/docs/measures_en.pdf>

1. I asked a question (emphasis added) and raised several points:

**Can you please guide me to the section of the RAA that would prevent such a business decision (i.e., a registrar deciding not to do business with citizens of a given country (whether it is Canada, Haiti, Iran or otherwise)?**

If there is such a provision, this would seem to be a compliance issue.  If there is not such a provision, I don't see how this particular issue comes within the scope of our group, since there is no indication that Resello's decision is triggered by OFAC (or by any non-US sanctions for that matter).

I have briefly reviewed the Resello Master Reseller Agreement and see no mention of OFAC or sanctions generally.  I note that Resello reserves the right to refuse any potential reseller.  The agreement can be found here: <https://www.resello.com/agreement#TCgeneral>

Please note that I am not supporting Resello's decision regarding Iranian citizens (though I have no idea why they made it), and I share your dismay with such a business policy.

1. Kavouss responded:

I do not know what question you raised.

If you believe that **Mark Assenberg from Resello  which is a subsidiary company for Yourholding holding:**

**with the below address**[Ceintuurbaan 28](https://maps.google.com/?q=Ceintuurbaan+28+8024+AA+Zwolle&entry=gmail&source=g)**,**[8024 AA Zwolle](https://maps.google.com/?q=Ceintuurbaan+28+8024+AA+Zwolle&entry=gmail&source=g)**,****+31 38 453 0752**

**based in Netherlands.being  a  non  US-Based company  on the basis of which**section of the RAA refrain such a business decision (i.e., a registrar deciding not to do business with citizens of a given country (whether it is Canada, Haiti, Iran or otherwise)?

May you address this issue as a factual happening .

Pls kindly advise how you trest and reflect that in the report

1. I replied:

As a factual happening, I don't see why this should be reflected in our report.  Resello's business decision does not seem to be related to OFAC, US jurisdiction or to any ICANN-related jurisdiction.

I asked you whether Resello's agreement with ICANN (the Registrar Accreditation Agreement (RAA)) prohibits Resello from establishing the policy you have mentioned.  If ICANN does not prohibit this policy, and it is not triggered by OFAC or some other connection to ICANN's jurisdictions, then it seems to be unconnected to our work.

I don't know whether there is an EU or Dutch law that requires this policy, or whether there is one that prohibits it.  If there is one that requires it, that is not an "ICANN jurisdiction" issue.  If there is one that prohibits it and Resello is violating Dutch law, then it may be that Resello is violating the RAA requirement (Section 3.7.2) that Registrars abide by applicable law.  But again, that's a Compliance issue.

1. Erika Mann followed up:

I will look into this, I will send a request to the European Commission, goes faster than anything else.

1. Paul Rosenzweig weighed in:

I agree with Greg.  It seems clear from what Erica said that this is not an OFAC issue at all but rather an EU sanctions issue (perhaps ICANN should also be getting a general license from the EU ) and since it is an individual registrar it isn’t an ICANN issue either

1. Erich Schweighofer added:

EU sanctions may have affected registrars doing business with Iranian citizens.

An overview: <http://www.consilium.europa.eu/en/policies/sanctions/iran/>

Mostly relevant (besides individual sanctions) – lifted on 16 January 2016: restrictions in the financial sector: freezing the assets of the Central Bank of Iran and major Iranian commercial banks, laying down notification and authorisation mechanisms for transfers of funds above certain amounts to Iranian financial institutions

A general license is a good idea, e.g. excluding explicitly registries and registrars and its financial transactions from financial sanctions in the legal instruments. Decisions are the competence of the Council of the EU, proposed by the High Representative of the Union for Foreign Affairs and Security Policy. Like in the U.S. – it is not easy but possible.

1. Kavouss responded:

Dear Greg

Dear Erika$

 What is the problem that you indicate that in the introductory part of the Report.

You have asked me on 13 and 18 of September to provide you with the factual evidence on this type of discrimination or restriction and I have provided that to you.

You you are blocking it. You are are expected to reflect the report on this type of restriction whether directly or indirectly related to OFAC.

Your action is not to decide what is right and what is wrong. There is no veto right given to you .I insist to reflect that .

Pls kindly do not further block this

You blocking whatever, you do not like

Pls kindly, ionce again. be helpful, fair and collaborative

1. Farzaneh Badii wrote (with Seun Ojedeji adding “+1 to this”):

I suggest we do not get into interpreting EU sanctions. That is a whole separate issue and far beyond our mandate here.

We have argued over this many times and came to a very good conclusion. When I asked that ICANN should deter the registrars from following OFAC when they do not have to Sam and others said that ICANN should not get involved with the registrars' internal policy especially when it contradicts with their local laws (I am paraphrasing not quoting them). So we came up with a very good language for ICANN to follow, it is in the doc:

"ICANN needs to bring awareness of these issues to registrars. ICANN should clarify to registrars that the mere existence of their RAA with ICANN does not cause them to be required to comply with OFAC sanctions. ICANN should also explore various tools to remind registrars to understand the applicable laws under which they operate and to accurately reflect those laws in their customer relationships."

This language is sufficient for ICANN. If some non-US based registrar sanction Iranians not because of the registrar's contract with ICANN, it is out of our hands to do something about it. We have a general recommendation which fits the purpose. Why are we opening this discussion again?

I am sympathetic to this issue. One reason is that I was born and raised in Iran. So if Iranians cannot become resellers or registrants at all because of some registrars policies then I will do whatever I can to persuade those registrars to change their policy (if not against the applicable law), but this is not an issue to be discussed at ICANN and this group.

1. Erika Mann replied:

Dear Kavouss -

I'm not blocking anything. Just making a comment with regard to the point you raised in relation to the Dutch case, insofar that I was saying the Dutch decision might relate to an EU restriction and not to an US restriction.

1. I replied:

I am not "blocking" anything, either.

It is a very serious allegation to say that a rapporteur is blocking something that they "do not like."  You have absolutely no idea what I "like" and "do not like."

The "problem" with "indicating" the Resello situation "in the introductory part of the Report" is that it has absolutely no connection, direct or indirect, to OFAC sanctions or to ICANN's "jurisdiction" -- in the US or elsewhere.

You have chosen to infer that Resello's policy is somehow related to OFAC, even though they are a non-US registrar and they have made absolutely no reference to OFAC or US law or ICANN.  There is no basis for that inference.  Without a basis, there is no reason for the Subgroup to include the Resello situation in the Recommendations on US sanctions or sanctions generally.

Without any connection to OFAC, sanctions regime or ICANN's jurisdiction, "Resello" only shows us that a registrar has a business policy of not entering into reseller agreements with Iranian passport holders.  Personally, I do not like this policy (so now you have some idea what I "do not like"), though I would want more facts before making a final judgment.

But why would it be in our Report?  It shows that a registrar developed a business policy of not doing business with Iranian passport holders, independent of any sanctions, US or otherwise.  This may be a bad policy, but we can't say it has any connection to sanctions (US or otherwise) or ICANN's jurisdiction.  Putting this in the Report would not support any Issues or Recommendation the Subgroup has identified.  If anything, it would be counterproductive, as it could infer from Resello's decision that there are reasons, unrelated to OFAC, for declining to do business with nationals of an OFAC-sanctioned country.  Why would we want that in this Report?

I look forward to your response to these concerns.

1. Kavouss then responded:

De ar Greg,

Sorry for misinterpretation .I did not make any allegatiuon at all

I just reflected my impression of the way the matter is treated.

The statement you made above, could only be interpreted that the suggestion made is not favoured by you according to your reasoning and or your judgement .

In my view when Something is not pursued it is blocked. My be the term blocked was not a correct one but in reality it did not carried forward

Sorry ,if the term " Blocked " boithered you then I replaced it by " is not currently being carried forward "

Now back to the issue Under discussion

Yes , it does not have direct relation with OFAC but why not you mention what you said in your last reply as follows

**"It was reported to the Group that a registrar ( RESELLO) has developed / used a business policy of not doing business with Iranian passport holders, independent of any sanctions, US or otherwise.  This may be a bad policy, .The group did not conclude that  it has any  direct ( or indirect ) connection to sanctions (US or otherwise) or ICANN's jurisdiction.The Group inferred from Resello's decision that there are reasons, unrelated to OFAC, for declining to do business with nationals of an OFAC-sanctioned country. There seems to be legitimate that ICANN  investigate the matter carefully and remind RESELLO that such course of action would be counterproductive as it is contray to the terms and conditions specified7 stipulated in the RAA".**

As you know I have raised this matter, independently from the activities of the Jurisdiction Group with Chairman,and CEO of ICANN and chair of the GNSO Council copied to to CCWG co-chairs and you .

Now may I kindly request you to consider the language that I proposed you and include it in appropriate / relevant part of the Report with ,possibly, some cross refernce in the body of recommands part .

Awaiting your kind consideration and quick reply

1. I replied:

I am out for the day, so I will give this a more detailed review later.  One quick question -- what section of the RAA are you referring to? That will help the Subgroup understand your proposal better.

1. Kavouss replied:

I have no specific section in mind

I just want to know which section of RAA give such authority to  resello to deny service?

1. I replied:

It's their business. I assume they can run it as they see fit, unless they violate their contract or the law. As such there would be no need for a provision of the sort you envision. Frankly, I've never seen such a provision in a contract of any sort.

I'm sure it's not your intention, but it seems as if you just turned my question around without attempting to answer it.

In any event, if there is no provision governing the company's discretion to enter into Reseller agreements with the parties of their choosing, then their decision  would not be contrary to the terms and conditions of their RAA.

In any event, if you could review the RAA and see how it might apply to this situation, that would help the Subgroup evaluate the RAA element of your proposal.

1. Kavouss responded:

You turn my question around and around

I am asking you under what terms and conditions of RAA , Resellor could deny to get involve in a business with a reseller of domain name under RAS .

It is not a private business of selling chocolate . It is Domain Name.

I know you naught have some sympathy with them ad you believe they are free to act relating to domain name under a global interest such as they could deal with selling chocolate

Pls be realistic

Pls do not confuse .

I request you and appeal you not to counter argue on something that has no logic

They can not deny to deal with a domain name without any valid reason

What is your personal problem to include that in the introduction as a real and actual case formally reported to the group

Why you dispute with me on a fact and reality

Why you authorise yourself to be a judge

We have not given you such authority

You self volunteered and we gave not objected to that provided that you do not disputes with us

You have no right to disputed

We are on equal fooling

There is no superiority between we two

Pls once again and again and again mention this fact and reality in the introduction as reported since you can not deny that

You have formally asked me on two consecutive calls to provide you with example and now it is a full week that you disputed and disputed with us

Is there any other motivation that you continue to reject my proposal

I will not give up

I will continue to ask and ask à faire treatment

1. Leon Sanchez entered the conversation:

It seems to me there is some miscommunication here between Greg and yourself.

If I understand well, you are asking under what basis could Resello refuse to enter into business with any person, company or country. Is that right Kavouss?

On the other hand, I believe Greg has stated that being no contractual obligation for Resello to be forced to enter into business with persons, companies or countries with which it does not want to do business with, then Resello is free to chose, freely, who to do business with. Is that right Greg?

I hope this helps us bridge this communication gap I feel we’re having.

1. I responded to Leon:

You are correct.

Furthermore, I am just trying to get the facts out so the Subgroup can consider Kavouss's proposed language. I believe the facts I am trying to get would give the best possibility for this contribution to be positively considered. There does seem to be misunderstanding and misinterpretation of my motives, which is unfortunate.  I am merely trying to facilitate understanding and consideration, and ultimately consensus.

1. Kavouss also responded to Leon:

Dear Leon

Thanks

Finally one of the co-/chairs came in after days and days of discussions

We try to let discussions flow on their own. We only step in when we believe there is some facilitation needed. As I believe is the case. So this was no lack of attention or dedication but a continued exercise of neutrality.

Do you believe that a Registrar having RAA could unilaterally refuse to enter into a business with an individual as it assumes that has had full freedom to decide as such

One thing is what I do or don’t believe, another very different is the fact that there isn’t anything in the RAA (to the best of my knowledge) that takes away any Registrars freedom to manage its business as it sees fit its interests. This last fact is what I would encourage us all to focus rather than in personal beliefs which, as noble as they may be, are out of our discussion’s scope.

Pls as a lawyer tell me the following

If a Registrar could decide ax such what is the purpose and usefulness of RAA

Any contract is based in the freedom of contracting of the parties that agree to it. If one does not agree with what is in a given contract, one does not enter into it or otherwise proposes changes and if they’re rejected one keeps away from signing it.

THROW IT INTO BASKET,

I believe there must be some obligation to positively respond as DNS is not a personal affairs such as selling potatoes .

This is not the scope of this subgroup’s discussion in my opinion. RAA is something shaped through a PDP so if there were any reforms to be made I am sure they should be ran through the PDP for that end.

I wonder how you came to the conclusions that Resello has full freedom to treat Domain Name which is an international resources similar to potatoes

My knowledge and understanding might not be as good as yours so I apologize if my limitations led me to conclusions which your higher knowledge may lead differently. However, with my limited knowledge and understanding, I came to that conclusion based on the contractual freedom that the parties have as a matter of legal principle. I could, of course, be wrong.

Moreover ,In your .view what is the difficulty to I include this actual and real case reported in the document

Because one or some .,,,individual do not wish to do so on a non founded ground

I have no problem in including whatever the subgroup and the plenary wish to include in the report. Remember that anyone can also add a dissenting view to whatever conclusions the subgroup arrives to.

1. Kavouss replied:

Greg

Leon

All

thanks to all of you reflecting on the matter .

I suggest the following

1.In the introductory part of the document, briefly describe the case as reported by me( See my earlier message reporting / describing the case )

2. in the recommends part insert the following

The group in attempting to address the case mentioned above  while did not find any provision in RAA to obligate the Resello to get into a business with the domain name reseller  to provide the requested domain name did not find also any provisionin the RAA  to allow the registrar to reject / deny the request .The group  therefore considered  that there was a need  that ICANN further examine the  matter  with a view to address the silent point in the RAA.

Do are agree to act and reflect that minimum information

1. Kavouss responded again:

Dear All

Greg

In anticipation of a further question by Greg or any one else I wish to edit / modify the suggested text

1.In the introductory part of the document, briefly describe the case as reported by me( See my earlier message reporting / describing the case )

2. in the recommends part insert the following

The group in attempting to address the case mentioned above  thought that the above situation might have  been arised as result of misiterpretation of applicability of OFAC Regulation to the case

The Group concluded that there was no relation between the case and  OFAC Regulation  and its applicability .

The Group also  to did not find any provision in RAA to obligate the Resello to get into a business with the domain name reseller  to provide the requested domain name did not find also any provisionin  in the RAA  to allow the registrar to reject / deny the request .The group  therefore considered  / recommands that there is  a need  that ICANN further examine the  matter  with a view to address the silent point in the RAA.

Do you agree to act and reflect that minimum information

**General Licenses**

***Recommendation***

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ICANN should then pursue one or more OFAC general licenses at the earliest possible time, unless significant obstacles were discovered in the “study” process. If there are significant obstacles, ICANN should report them to the [empowered] community and seek its advice on how to proceed. If unsuccessful, ICANN would need to find other ways to accomplish the ultimate goal -- enabling transactions between ICANN and residents of sanctioned countries to be consummated with a minimum of “friction.” It is critical that ICANN communicate regularly about progress toward securing general licenses, in order to raise awareness in the ICANN community and with affected parties. The role of ICANN, to make awareness about such situation is critical and should not be undermined.

1. A U.S.-based registrar incorporated in Delaware as GoDaddy, LLC and headquartered in Scottsdale, Arizona. [↑](#footnote-ref-1)
2. A U.S.-based registrar incorporated in California as OnlineNIC, Inc. and headquartered in San Leandro, California. [↑](#footnote-ref-2)
3. Resello’s “General Terms and Conditions,” for resellers state in Article 1.1 that “acceptance by Resello … may be refused without reason.” <https://www.resello.com/agreement> [↑](#footnote-ref-3)