

To,

Mr. Fadi Chehade, CEO and President

Registrar Compliance Audits:

In furtherance of the DIDP process of ICANN, we would like to request information regarding ICANN's internal processes, as well as external measures with respect to compliance and audits.

In his speech at the opening ceremony for ICANN 51 (13 October, 2014, Los Angeles),¹³ Mr. Chehade emphasized the importance of audits, both internal and external, in ensuring compliance in the ICANN registers. Mr. Chehade has expressed, and rightfully so, a strong stance with respect to the necessity for compliance audits to ensure the fulfilment of contractual commitments. He has also mentioned that the audit of compliance is independent, which seems indicative of a fair and transparent system to keep checks on the process.

This was reiterated again as a concern in the US Congressional Committee meeting on "*Internet Governance Progress after ICANN 53*."¹⁴ Mr. Chehadi made it clear that ICANN "*enforced contracts*" with and that "*regular audits of about 40000 complaints*" were being conducted to that effect.¹⁵ The Registrar Accreditation Agreement, 2013 makes it evident that there are mechanisms in place for self assessments by the Registrars, as well as audits for contractual compliance.¹⁶

¹³ <http://www.americanrhetoric.com/speeches/fadichehadeicann51.htm>

¹⁴ Available at https://www.youtube.com/watch?v=fD_INKXTg2k&feature=youtu.be&t=22m39s

¹⁵ Available at https://www.youtube.com/watch?v=fD_INKXTg2k&feature=youtu.be&t=22m39s at 1.04.17.

¹⁶ Section 3.15, Registrar Accreditation Agreement, 2013. "*Registrar Self-Assessment and Audits*. Registrar shall complete and deliver to ICANN on a schedule and in the form specified by ICANN from time to time in consultation with registrars a Registrar self-assessment. Registrar shall complete and deliver to ICANN within twenty (20) days following the end of each calendar year, in a form specified by ICANN a certificate executed by the president, chief executive officer, chief financial officer or chief operating officer (or their equivalents) of Registrar certifying compliance with the terms and conditions of this Agreement. ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct on its behalf, contractual compliance audits to assess compliance by Registrar with the terms and conditions of this Agreement. Any audits pursuant to this Section 3.15 shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit in such a manner as to not unreasonably disrupt the operations of Registrar. As part of such audit and upon request by ICANN, Registrar shall timely provide all responsive documents, data and any other information necessary to demonstrate Registrar's compliance with this Agreement. Upon no less than ten (10) days notice (unless otherwise agreed to by Registrar), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registrar with the terms and conditions of this Agreement. ICANN shall not disclose Registrar

Therefore, in the interest of transparency, we would therefore like to request you for

- a. Copies of the registrar contractual compliance audit reports for all the audits carried out as well as external audit reports from the last year (2014-2015).
- b. A generic template of the notice served by ICANN before conducting such an audit.¹⁷
- c. A list of the registrars to whom such notices were served in the last year.
- d. An account of the expenditure incurred by ICANN in carrying out the audit process.
- e. A list of the registrars that did not respond to the notice within a reasonable period of time.
- f. Reports of the site visits conducted by ICANN to ascertain compliance.¹⁸
- g. Documents which identify the registrars who had committed material discrepancies in the terms of the contract.
- h. Documents pertaining to the actions taken in the event that there was found to be some form of contractual non-compliance.
- i. A copy of the registrar self-assessment form which is to be submitted to ICANN.

We hope that our request will be processed within the stipulated time period of 30 days. Do let us know if you require any clarifications on our queries.

Thank you very much.

Warm regards,

Padmini Baruah

*confidential information gathered through such audits except as required by applicable law, legal proceedings, or as expressly permitted by any Specification or Policy (including ICANN's Documentary Information Disclosure Policy, as such policy may be amended from time to time); provided, however, that, except as required by applicable law or legal proceedings, ICANN shall not release any information that Registrar has marked as, or has otherwise designated in writing to ICANN as, a "confidential trade secret," "confidential commercial information" or "confidential financial information" of Registrar. If any applicable law, legal proceeding or Specification or Policy permits such disclosure, ICANN will provide Registrar no less than fifteen (15) days notice of its intent to disclose such information, unless such notice is prohibited by law or legal proceeding. Such notice shall include to whom and in what manner ICANN plans to disclose such information"*¹⁶

¹⁷ Section 3.15, Registrar Accreditation Agreement, 2013. "...ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN." available at <https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en#raa>.

¹⁸ Section 3.15, Registrar Accreditation Agreement, 2013. "...Upon no less than ten (10) days notice (unless otherwise agreed to by Registrar), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registrar with the terms and conditions of this Agreement." available at <https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en#raa>.

THE
CENTRE
FOR

internet
& Society



Centre for Internet and Society
#194, 2nd 'C' Cross, Domlur 2nd Stage,
Bangalore - 560 071
Karnataka, India

Programme Associate - Internet Governance

Centre for Internet and Society