

From: Garth Bruen
To: ICANN Contractual Compliance
Subject: Response to [~FGQ-678-36142]: Additional information for complaint re: ORG
Date: 28/2/2017

Introduction

This document is in response to the request by ICANN compliance staff to provide “Evidence supporting your complaint that the TLD org has violated a provision of its registry agreement or an ICANN Consensus Policy” and “Any documentation, including but not limited to correspondence with the registry operator, relevant to your complaint” in reference to ICANN ticket FGQ-678-36142.

Origin of complaint

On 10 August 2016, per the published statement by Public Interest Registry (PIR) that they accept abuse reports of domains engaged in “Illegal or fraudulent actions” I submitted a complaint concerning onestoppharma.org. The domain name onestoppharma.org operates as a pharmacy without a license (fraud) and sells opioids without a prescription (illegal).

According to PIR: *“Pursuant to Public Interest Registry’s Registry-Registrar Agreement(s), Public Interest Registry reserves the right to deny, cancel or transfer any registration or transaction, or place any domain name(s) on registry lock, hold or similar status, that it deems necessary, in its discretion”*¹

Based on its public statements, PIR accepts reports of .ORG domains engaged in illegal and fraudulent actions. Such domains are subject to enforcement at PIR’s *discretion* based on its agreement with ICANN as stated by PIR.

PIR Initial Response

Brian Cimboric, Deputy Counsel of PIR responded, in part, on 11 August 2017 that:

*“Public Interest Registry is the manager of the registry of the .org domain, operating under the terms of a contract with the Internet Corporation for Assigned Names and Numbers (ICANN). This contract is available at: <http://www.icann.org/en/about/agreements/registries/org>. **Pursuant to the terms of its contract with ICANN, Public Interest Registry has no control over the uses to which a domain name may be put, and, absent a finding of technical abuse of the DNS, has no control over the content or operations of any web site. We are not authorized to intervene with a domain name registration unless requested by the registrar or pursuant to the order of a court having jurisdiction.**”*

¹ <http://pir.org/policies/org-idn-policies/anti-abuse-policy/>

There are **two (2)** main issues with this response. First, the statement by Cimbolic contradicts the published policy of PIR and second, a careful reading of the contract does not show the language claimed by Cimbolic. In terms of the PIR policy versus the Cimbolic statements I have provided this chart:

Stated Policy Comparison

PIR Published Policy	Cimbolic Statement
“Public Interest Registry also reserves the right to place upon registry lock, hold or similar status a domain name during resolution of a dispute.”	<i>“We are not authorized to intervene with a domain name registration...”</i>
“Public Interest Registry reserves the right to deny, cancel or transfer any registration or transaction, or place any domain name(s) on registry lock, hold or similar status, that it deems necessary, in its discretion”	<i>“...unless requested by the registrar or pursuant to the order of a court having jurisdiction. “</i>
“Abusive uses, as defined above, shall give rise to the right of Public Interest Registry to take such actions under Public Interest Registry’s Registry-Registrar Agreement(s) in its sole discretion.”	<i>“Public Interest Registry has no control over the uses to which a domain name may be put,”</i>

There is a fundamental conflict between PIR’s published policy and Cimbolic’s statements. These conflicts are mutually exclusive and represent non-transparent dealings with the community since one of the policies must be incorrect.

The second conflict problem, in Cimbolic's reference to the contract² (*"Pursuant to the terms of its contract with ICANN"*), is outlined bellow similarly:

Cimbolic Statement	.ORG Agreement as cited by Symbolic
"Public Interest Registry has no control over the uses to which a domain name may be put"	No similar language found
"absent a finding of technical abuse of the DNS, has no control over the content or operations of any web site"	No similar language found
"We are not authorized to intervene with a domain name registration unless requested by the registrar or pursuant to the order of a court having jurisdiction"	No similar language found

Furthermore, PIR's published policy of *"the right to deny, cancel or transfer any registration or transaction, or place any domain name(s) on registry lock, hold or similar status"*³ is sourced from the Registry-Registrar agreement which specifically states:

*"(3.6.5.)PIR reserves the right to deny, cancel or transfer any registration or transaction, or place any domain name(s) on registry lock, hold or similar status, that it deems necessary, in its discretion;"*⁴

Additionally, there is no requirement for a court order, limitations on PIR discretion nor a definition specific of technical abuse. If Cimbolic is correct in his interpretation of PIR's agreement with ICANN, then the source of authority in the registrar agreement is in doubt. Given the Cimbolic definition, the two agreements are in conflict and this must be resolved by ICANN.

² <https://www.icann.org/resources/unthemed-pages/org-agmt-html-2013-09-12-en>

³ <http://pir.org/policies/org-idn-policies/anti-abuse-policy/>

⁴ <https://www.icann.org/resources/unthemed-pages/appendix-08-93-2006-12-08-en>

Question to PIR about the contract

Due to the grave confusion over contractual authority granted to PIR over the .ORG registry I asked Mr. Cimboric to clarify the situation. On 27 October 2016, I wrote to Cimboric:

“Mr. Cimboric,

I can find no requirement for a court order to suspend a domain in any of the contracts. Having this reference would be useful if you could provide it. “

There was no response to this question. In pursuit of similar complaints to PIR concerning other illegal and fraudulent domains I received additional conflicting policy statements from Cimboric which I responded to with further attempts to understand the contract as cited by Cimboric. Cimboric has not provided any specific section of the contract or language therein that supports his private policy statements to me.

Instruction to stop contacting PIR

In the intervening months additional illegal and fraudulent domains within the PIR .ORG registry were found and reported through PIR’s published abuse reporting process. On 5 January 2017 PIR’s chief legal counsel, Elizabeth Finberg, instructed me to cease contacting them about this issue. I have complied with their instruction but the issue of non-transparent policy remains.

Summary of issue

ICANN contracts are public agreements with various parties to maintain DNS services. Transparency is an ICANN covenant. Statements provided by PIR staff are in apparent conflict with published PIR policy and the cited contracts.

Since there are extreme conflicts in the PIR policy statements and inaccurate claims about the contract, PIR's adherence to the covenant of transparency is in question. Additionally, because PIR instructed me not to contact them about these issues, ICANN must resolve this dispute. PIR cannot continue to operate in a non-transparent manner which is inconsistent with its own contract. PIR staff claims they have "fully explained our position" yet the core contractual conflicts have not been explained.

However, if Mr. Cimboric is correct in his claims, there are two problems: 1) PIR's published policy is in conflict with their ICANN registry agreement AND 2) the .ORG registrar agreement is in conflict with the PIR-ICANN agreement.

There are several possible resolutions:

- A) PIR should re-publish it's abuse policies to match claims concerning restrictions of authority in the registry agreement
- B) The registrar-registry agreement clashes need to be resolved
- C) The registrant agreement for .ORG needs to be republished to all registrants

Attachments:

1. Cimboric email to Bruen 11 August 2016
2. Bruen email to Cimboric 27 October 2016
3. Finberg email to Bruen 5 January 2017