



An Roinn Fiontar,
Trádála agus Fostaíochta
Department of Enterprise,
Trade and Employment

Initial Assessment by the Ireland National Contact Point for the OECD Guidelines for Multinational Enterprises

**Specific Instance Complaint from the Crypto Currency
Resolution Trust (CCRT) and Chagos Refugees Group
UK (CRG UK) against Afilias Ltd., 101domain GRS Ltd.
and Internet Computer Bureau Limited**

Disclaimer

This document is without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city, or area. The Ireland NCP recognises the sovereignty dispute regarding the 'British Indian Ocean Territory (BIOT)'. The NCP network is not the authority to make determinations regarding sovereignty. The Ireland NCP is considering this specific instance complaint solely from the perspective of the OECD Guidelines.

Summary of the Ireland NCP Decision

1. The complaint is made by an attorney (hereinafter “the Notifier”) acting as the legal representative and contact person for the Chagos Refugees Group UK (CRGUK) and the Crypto Currency Resolution Trust (hereinafter “the Complainants”). The complaint is against Afilias Ltd. (Ireland) and its subsidiaries 101domain GRS Ltd. and Internet Computer Bureau Limited (hereinafter referred to as “Afilias”, “101domain GRS”, “ICB” and collectively as “the Companies”).
2. The complaint concerns the Companies’ maintenance and sale of the .io country code top-level domain (ccTLD) which is associated with the British Indian Ocean Territory (BIOT), the UK administration of the Chagos Islands, arguing that the Companies’ roles in the provision of the .io ccTLD is connected to adverse impacts relating to human rights and consumer interests.
3. The complaint relates to Chapter IV (Human Rights) and Chapter VIII (Consumer Interests) of the Guidelines. Under Chapter IV, the Notifier alleges that the Companies have failed in their obligation to have a policy commitment to human rights; have failed to conduct proper human rights due diligence; and have failed to provide for or co-operate in the remediation of adverse human rights impacts. Under Chapter VIII, the Notifier alleges that the Companies have made deceptive claims about the nature of their products; have failed to provide consumers with adequate dispute resolution mechanisms; have failed to co-operate fully with public authorities to prevent and combat deceptive marketing practices; and have failed to take into account the specific challenges arising for consumers from e-commerce.
4. The Ireland NCP received separate responses from Afilias/ICB and 101domain GRS. Both responses stated that 101domain GRS was no longer a subsidiary of Afilias and was therefore no longer affiliated with ICB. The NCP then wrote to the Companies

requesting submissions on the substance of the complaint. 101domain GRS declined to respond or engage further with the NCP.

5. Afiliias and ICB have argued that the claims made in the complaint are not substantiated. They argue that they have been involved in promotion of human rights relevant to the ICT industry and also provided copies of correspondence to demonstrate their engagement in dialogue with the Notifier. They argue that in operating a domain name registry, they are not involved in the marketing of the .io ccTLD; that the terms used to describe the .io ccTLD are technical in nature and not intended to facilitate fraudulent usage; that their terms of service do not allow criminal behaviour and they monitor abuse in collaboration with law enforcement agencies; and that their abuse monitoring system maintains up-to-date awareness of threats in line with industry standards, including through participation in best practice fora.
6. The Ireland NCP has decided that the complaint merits further examination. The NCP will proceed to the offer of good offices between the Complainant and the Companies. The NCP regrets the outright refusal of 101domain GRS to engage in the specific instance process and notes that the standards of responsible business conduct outlined in the Guidelines include the procedural aspects around remedy, namely the specific instance process. The refusal of 101domain GRS to engage with the specific instance process or demonstrate participation in an equivalent dispute mechanism is not compatible with standards of responsible business conduct.
7. The Ireland NCP sets out the reasons for this decision in the interests of transparency and accountability. **The decision to offer good offices does not determine whether the Companies have acted consistently or inconsistently with the Guidelines.**

Object of the Complaint

8. The complaint concerns the Companies' maintenance and sale of the .io country code top-level domain (ccTLD), a domain name associated with the British Indian Ocean Territory (BIOT), the UK administration of the Chagos Islands. Following clarification on the precise grounds of the complaint under the Guidelines with the Notifier, it was confirmed there are two aspects to the complaint - they are (i) the human rights claims and (ii) the consumer interests claims.
9. The human rights aspect of the complaint argues that the Companies have abetted human rights abuses against the Chagossians by facilitating the BIOT administration.

The complaint also alleges that by marketing a digital asset associated with the Chagos Islands without sharing profits with the Chagossians, the Companies are “*doing business with an unlawful and apartheid colonial regime*”¹.

10. The Notifier alleges that the Companies:

- Failed to adopt a policy commitment to human rights (Chapter IV, Paragraph 4)
- Failed to conduct human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts (Chapter IV, Paragraph 5)
- Failed to provide for, or co-operate in, the remediation of adverse human rights impacts (Chapter IV, Paragraph 6)

11. The consumer interests aspect of the complaint claims that the Companies have “*affirmatively marketed and administered ccTLD .io in such a manner that it has become an offshore haven for organized criminals*”². The complaint argues that by marketing .io domain names to users engaged in fraudulent activity using cryptocurrencies, the Companies have breached their obligations to consumers under Chapter VIII of the Guidelines.

12. The Notifier alleges that the Companies:

- Failed to provide consumers with sufficient non-judicial dispute resolution mechanisms (Chapter VIII, Paragraph 3)
- Made representations or omissions that were deceptive, misleading, fraudulent or unfair (Chapter VIII, Paragraph 4)
- Failed to co-operate fully with public authorities to prevent and combat deceptive marketing practices (Chapter VIII, Paragraph 7)
- Failed to take into consideration the specific challenges that e-commerce may pose for consumers (Chapter VIII, Paragraph 8(ii))

¹ Complainant submission, p. 12

² Complainant submission, p. 2

13. The Notifier requests that the Ireland NCP provide its good offices to mediate between the Complainants and the Companies to secure recognition of their legitimate concerns as stakeholders. The complaint seeks the following reliefs³:

- An accounting of payments made to the British Indian Ocean Territory (BIOT) or the Foreign, Commonwealth and Development Office (FDCO) by ICB
- Payment of royalties claimed to be due to the Chagossian people
- Payment of a “fair percentage” of the acquisition price paid for the .io ccTLD
- An interim agreement between ICB and the Chagossian people including an annual payment schedule of royalties, a disbursement schedule of funds owed and provision for a Chagossian director on the board of ICB
- Afilias and ICB to “cease and desist from enabling criminal activities that damage the reputation and value of ccTLD .io” by working with the complainants to eradicate cryptocurrency-based crime carried out using the .io ccTLD
- An evaluation of cryptocurrency crime issues and support in engaging with the BIOT administration in seizing assets used in crime in order to reimburse victims
- Support for the creation of a “crypto crime super fund” to be established by the cryptocurrency industry
- Failing the above, the complaint calls on Afilias to “divest from BIOT and transfer constructive ownership of ICB to the Complainants in exchange for the goodwill engendered and cancellation of obligations”.

14. The complaint lodged with the Ireland NCP is against the Companies. However, the Ireland NCP was informed by legal advisers of Afilias that 101domain GRS was no longer a subsidiary of Afilias. They therefore proposed to provide a detailed submission on behalf of Afilias and ICB but not 101domain GRS.

³The NCP notes that it is not a court – participation in the process is voluntary and the NCP does not have the authority to order any remedy measure. Dispute resolution through the NCP process is intended to be consensual and focused on identifying constructive solutions and mutual agreement between parties.

15. The Ireland NCP then forwarded the complaint to 101domain GRS. In response, counsel for 101domain GRS stated that 101domain GRS was no longer a subsidiary of Afiliat. This letter further stated that the reliefs requested in the complaint (outlined above in paragraph 13) did not relate to 101domain GRS, and that the company’s “*activities merely comprise the provision of domain management services and that it has no ownership interest or rights in the country code top level domain for Indian Ocean Territory*”.⁴
16. The Ireland NCP requested a submission from the advisers of 101domain GRS but did not receive a response to this communication. In a phone call with the legal representative of 101domain GRS, the NCP was informed that the company had instructed its advisers not to respond to any further contact from the NCP. In the absence of evidence from 101domain GRS, the Ireland NCP considers those aspects of the complaint relevant to 101domain GRS worthy of further consideration. The Ireland NCP wishes to express its dissatisfaction with 101domain GRS’s refusal to engage with the process. The NCP views the procedural and remedial aspects of the Guidelines as integral to the text; as such a failure to engage with a specific instance or demonstrate engagement with an equivalent dispute resolution mechanism is not compatible with the expected standards of responsible business conduct.
17. With respect to the ***human rights claims***, Afiliat and ICB noted their involvement in several multi-stakeholder and industry initiatives aiming to uphold best practice frameworks promoting human rights relevant to the ICT industry. In disputation of the claim that they had not engaged in efforts to remediate human rights impacts, the companies argued that the starting point for an obligation to remediate was establishing that they had caused or contributed to human rights impacts, which they did not accept.
18. Afiliat and ICB’s submission disputed the ***consumer interests claims***, arguing that they had not made deceptive, misleading, fraudulent or unfair representations or omissions as they had not been involved in the marketing of the .io ccTLD. The companies outlined the rules binding their users against illegal abuse of domain names and the requirements for users to provide valid, accurate and verifiable information. They argued that they had co-operated with public authorities to prevent and combat deceptive marketing practices and illegal user behaviour to industry

⁴ Letter to the Ireland NCP from William Fry LLP, acting for 101domain GRS Ltd., 12 October 2021

standards as outlined in industry frameworks and to the greatest degree practical for the operators of a domain name register.

Guidelines provisions cited by the Complainant

Chapter IV: Human Rights

A.4: Enterprises should *“Have a policy commitment to human rights”*.

A.5: Enterprises should *“Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts”*.

A.6: Enterprises should *“Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts”*.

Chapter VIII: Consumer Interests

A.3: Enterprises should *“Provide consumers with access to fair, easy to use, timely and effective non-judicial dispute resolution and redress mechanisms, without unnecessary cost or burden”*.

A.4: Enterprises should *“Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair”*.

A.7: Enterprises should *“Co-operate fully with public authorities to prevent and combat deceptive marketing practices (including misleading advertising and commercial fraud) and to diminish or prevent serious threats to public health and safety or to the environment deriving from the consumption, use or disposal of their goods and services”*.

A.8: Enterprises should *“Take into consideration, in applying the above principles, i) the needs of vulnerable and disadvantaged consumers and ii) the specific challenges that e-commerce may pose for consumers”*.

The Initial Assessment Process

19. The purpose of the Initial Assessment is to determine if the issues raised in the complaint merit further examination by the Ireland NCP. It is not intended to be a detailed assessment/fact-finding analysis of the complaint, or a detailed assessment of the Companies' rebuttal of the complaint. **It does not determine whether the Companies have acted consistently or inconsistently with the Guidelines.**

28 July 2021	NCP receives complaint
16 August 2021	NCP forwards complaint to the legal advisers of Afilias
08 September 2021	Counsel for Afilias/ICB informs NCP that it is no longer affiliated with 101domain GRS
29 September 2021	NCP forwards complaint to 101domain GRS
12 October 2021	Counsel for 101domain GRS writes to NCP to clarify that it is no longer an Afilias/ICB subsidiary
15 October 2021	NCP receives submission from Afilias/ICB refuting complaint
15 October 2021	Ireland NCP writes to 101domain GRS encouraging submission
12 November 2021	Counsel for 101domain GRS informs the NCP that 101domain GRS does not intend to comment further on the complaint
25 February 2022	Ireland NCP contacts the Notifier to request further information on several points and clarification of the precise grounds of the complaint
20 March 2022	The Notifier submits a supplementary brief to the Ireland NCP, providing further information and clarification on aspects of the complaint
28 March 2022	The Ireland NCP forwards the Notifier's supplementary brief to the counsel for Afilias/ICB
22 April 2022	The Ireland NCP receives a reply to the Notifier's supplementary brief from the counsel for Afilias/ICB

26 April 2022	On receipt of written assurances of confidentiality from the Notifier, the Ireland NCP forwards the counsel for Afiliias/ICB reply to the Notifier
28 October 2022	Ireland NCP issues draft initial assessment to the parties for comment
11 November 2022	Ireland NCP forwards draft initial assessment to the UK and US NCPs
16 November 2022 & 2 December 2022	Afiliias/ICB queries aspects of the initial assessment and requests a meeting with NCP officials
6 December 2022	The Ireland NCP meets with the UK NCP to discuss the Afiliias/ICB correspondence
16 December 2022	Afiliias/ICB submits preliminary comments on the draft initial assessment pending a meeting with the Ireland NCP
20 December 2022	Ireland NCP meets with Afiliias/ICB representatives to discuss their concerns regarding the draft initial assessment
23 December 2022	Afiliias/ICB writes to the Ireland NCP with comments on the draft initial assessment
17 February 2023	Ireland NCP issues updated initial assessment to parties for information
2 March 2023	Ireland NCP publishes initial assessment

Is the Ireland NCP the right entity to assess the Specific Instance Complaint?

20. Afiliias was headquartered in Dublin, Ireland between 2001 and August 2018, during which time it acquired ICB. 101domain GRS is headquartered in Dublin and it was a subsidiary of Afiliias until 28 December 2020. On this basis, the Ireland NCP has determined it is the right entity to assess this complaint. As Afiliias has subsequently moved its headquarters to the USA and ICB is located in the UK, the Ireland NCP has kept the NCPs of these countries informed.

Ireland NCP Decision

21. The Ireland NCP decides, based on the information provided by the Notifier and the Companies, that grounds exist for further consideration of the complaint. Both parties have submitted information to the NCP which it considers material and substantiated. The Ireland NCP believes that there are significant differences in perspective between the parties and, therefore, organising dialogue between them could contribute to a resolution of the issues. The Ireland NCP will therefore offer its good offices to facilitate a discussion of those claims. The Ireland NCP is obliged to set out the reasons for this decision in some detail in the interests of transparency and accountability. The following points were considered in arriving at this decision:

a) Identity of the Complainants and their interest in the matter

22. The complaint was lodged by a legal representative and contact person on behalf of the CRGUK and the Crypto Currency Resolution Trust. The Ireland NCP considers the Complainants to have legitimate and bona fide interests in the matter.

b) Whether the issue is material and substantiated

23. Regarding the alleged failure to adopt a policy commitment to human rights, the NCP notes arguments advanced by Afilias and ICB concerning Afilias' participation in stakeholder initiatives aimed at protecting user rights. However, as no statement of policy as described in Chapter IV, Paragraph 4, and in Paragraph 44 of the attached commentary was provided, the Ireland NCP finds sufficient grounds to warrant further examination of this aspect of the complaint.

24. In relation to human rights due diligence and the remediation of adverse human rights impacts, the NCP notes the different perspectives of the parties on the issues and, therefore, organising dialogue between the parties could contribute to a resolution of the issues.

25. Regarding the alleged failure to offer non-judicial dispute resolution mechanisms, Afilias and ICB have presented evidence of correspondence between their legal representative and the Notifier on the consumer interests issues raised in the complaint. The letter states that the companies are prepared to act on receipt of a court order or contact from a law enforcement agency. Afilias and ICB have argued that their policies in this regard are in line with best practice as understood by industry fora such as the Council of European National Top-level Registries (CENTR). They have also presented evidence that their approach parallels the policies of leading domain name registers. Having regard to the Commentary on Chapter VIII of the Guidelines, which notes that dispute resolution mechanisms

established to resolve consumer complaints “*can provide more practicable solutions to complaints than legal actions, which can be expensive, difficult and time consuming for all the parties involved*”⁵, and the terms of the [OECD Recommendation on Consumer Dispute Resolution and Redress](#), the Ireland NCP considers this aspect of the complaint to be worthy of further consideration in respect of the Companies.

26. Concerning the alleged deceptive, misleading, fraudulent or unfair representations, the Ireland NCP notes the arguments advanced by Afilias and ICB concerning the distinction between their functions and those of 101domain GRS, which is no longer affiliated with them. However, the NCP has regard to Paragraph 4 of Chapter I of the Guidelines, which states “*The Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the Guidelines*”⁶. Given the historic ownership of 101domain GRS by Afilias, the Ireland NCP finds it appropriate to consider the marketing of the .io ccTLD the responsibility of the multinational enterprise as a whole up to 2020 only (after this point 101domain GRS is no longer affiliated with the Companies’).
27. The Notifier notes the use of the term “Chagosians [*sic*]Domains” in 101domain GRS marketing material stating consumers may be misled by the association of the .io ccTLD with the Chagossians, enabling the Companies to “*profit from their attempts to return to their homes... Consumers attempting to mitigate their support for the unlawful BIOT administration would logically believe “Chagossian” domains somehow benefit Chagossians when that is certainly not the case*”⁷. The Ireland NCP considers this claim to be sufficiently material and substantiated to merit further examination.
28. With respect to the alleged failure to co-operate with public authorities, the Notifier has submitted media reports and statements from the City of London Police to substantiate claims that the .io ccTLD has been used for fraudulent activity. The Notifier claims that “*Afilias has done nothing appreciable to curb ccTLD crypto asset fraud*”⁸. In response, Afilias and ICB note their participation in best practice fora

⁵ OECD Guidelines for Multinational Enterprises, p. 53

⁶ OECD Guidelines for Multinational Enterprises, p.17

⁷ Supplementary brief, p.7

⁸ Complaint document, p. 18.

aimed at the prevention of user misbehaviour and their co-operation with law enforcement agencies including the City of London Police.

29. Noting the potential severity of issues around deceptive marketing practices in online commerce, there is scope to facilitate dialogue to allow the parties to understand their respective positions better and determine if there are more effective practices that could be considered.
30. With reference to the Companies' alleged failure to consider the needs of vulnerable and disadvantaged consumers and the challenges arising from e-commerce the Notifier has made submissions outlining consumer experiences with platforms hosted on the .io ccTLD. Afilias and ICB have argued that this claim constitutes a misunderstanding of their role as non-consumer facing businesses responsible for the maintenance of a database of registered domain names. Following consideration of submissions from both parties, the Ireland NCP considers this aspect of the complaint to merit further consideration.

c) Link between the enterprise's activities and the issues raised in the specific interest

31. The Ireland NCP recognises that the OECD Guidelines encourage enterprises to consider issues beyond their own operations and seek to *“prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship”*⁹.
32. Journalistic reports highlighted in the complaint¹⁰ and during the NCP's assessment¹¹ report a statement by a former director of ICB outlining a business relationship between ICB and the BIOT administration. The NCP also notes statements on the part of members of the UK Government, highlighted in the submissions of Afilias and ICB, denying a financial relationship with ICB^{12, 13}.

⁹ OECD Guidelines for Multinational Enterprises, p. 20

¹⁰ [The dark side of .io: How the U.K. is making web domain profits from a shady Cold War land deal – Old GigaOm](#)

¹¹ [Why the .io domain name extension faces an uncertain future | Fortune](#)

¹² [UK Parliament – British Indian Ocean Territory: Written question – HL685, 7 June 2014 \(Annex 7\)](#)

^e [September 2014: Hansard Written Answers. House of Lords written question – answered on 26th September 2014 \(Annex 8\).](#)

33. The NCP notes the disagreement between the parties on the existence of a financial relationship between the Companies and the BIOT administration, and differences in statements given by ICB and the UK Government during recent years. In light of media reporting on the .io ccTLD and its connection with the human rights issues raised in this complaint, along with the ICB having a service address in the BIOT¹⁴, the NCP considers the complaint to merit further examination.
34. The Ireland NCP notes the argument offered by Afiliias and ICB distinguishing these companies' functions from the promotional and marketing role of 101domain GRS. However, in light of the fact that all three companies were under common ownership until 2020, the Ireland NCP considers that there is a sufficient link between the Companies and the consumer interest issues raised in the complaint.

d) Relevance of applicable law and procedures, including court rulings

35. The Ireland NCP is aware of a 2019 [Advisory opinion of the International Court of Justice on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965](#). The NCP also takes notice of [UN General Assembly Resolution 73/295](#), calling for changes to the status of the Chagos Islands¹⁵.
36. The NCP has also apprised itself of the extensive history of litigation concerning the Chagos Islands. This was concisely outlined in the Court of Appeal of England and Wales by Sir Terence Etherton MR, Lord Justice Green and Lord Justice Dingemans in *R (Hoareau and Bancoult (No.5)) v Secretary of State for Foreign and Commonwealth Affairs*¹⁶.

e) How similar issues have been, or are being, treated in other domestic or international Complaints

37. As noted above, the Ireland NCP is aware of that the issues raised in this complaint have been subject to extensive litigation. The NCP is unaware of any other specific

¹⁴ [Listed on the website of the Internet Assigned Numbers Authority \(IANA\)](#)

¹⁵ [General Assembly Welcomes International Court of Justice Opinion on Chagos Archipelago, Adopts Text Calling for Mauritius' Complete Decolonization | Meetings Coverage and Press Releases \(un.org\)](#)

¹⁶ [2020] EWCA Civ 1010

instance concerning these issues under the OECD Guidelines for Multinational Enterprises.

f) Whether the consideration of the Specific Instance contributes to the purpose and effectiveness of the Guidelines

38. The Ireland NCP notes the complexity of this case, with particular regard to the due diligence responsibilities associated with the purchase of a ccTLD. The Ireland NCP has considered the information submitted to it and concluded that further examination of some issues raised in this complaint may contribute to a resolution of these issues and can therefore contribute to the purpose and effectiveness of the Guidelines.
39. The Ireland NCP regrets the outright refusal of 101domain GRS to engage with the specific instance process. The NCP hopes that proceeding with the specific instance will underline to companies the importance of the OECD Guidelines and the expectation that their processes are respected.

Next Steps

40. Following the issuing of the Initial Assessment to the parties to the complaint and its subsequent publication, the Ireland NCP will formally ask the parties whether they are willing to engage in mediation with the aim of reaching a resolution to certain issues raised in the complaint.
41. The offer of good offices is voluntary to all parties. Subject to their response, the Ireland NCP will liaise with the parties to arrange mediation meetings. If these meetings achieve a resolution, the Ireland NCP will reflect this in a Final Statement without making a determination about the merits of the claim on whether the Companies acted consistently or inconsistently with the Guidelines.
42. If mediated solutions are not possible, the Ireland NCP will conduct an examination of the complaint and will reflect the outcome in a Final Statement that may include recommendations.
43. The Ireland NCP notes that the Implementation Procedures to the OECD Guidelines call for the NCP to make a statement “if the NCP finds that one or more of the parties

to the specific instance is unwilling to engage or to participate in good faith”¹⁷. Such a statement will reflect the conduct of parties and may include determinations on companies’ compliance with the Guidelines.

ENDS

Ireland National Contact Point

OECD Guidelines for Multinational Enterprises

Trade Division

Department of Enterprise, Trade and Employment

2 March 2023

¹⁷ OECD Guidelines for Multinational Enterprises, p.85