Preliminary Issue Report on Uniformity of Contracts to Address Registration Abuse

STATUS OF THIS DOCUMENT

This Preliminary Issue Report investigates the issues to be explored in a possible PDP on whether a minimum baseline of registration abuse provisions should be created for all in-scope ICANN agreements. This report is being published for public comments and will be followed by a Final Issue Report to be submitted to the GNSO Council.

SUMMARY

This Preliminary Issue Report is published in response to a request from the GNSO Council pursuant to a resolution adopted on 6 October 2011 (see – Motion 8 at http://newgnso.icann.org/meetings/minutes-council-06oct11-en.htm.

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1.   Executive Summary

1.1   Objective

▪ This Preliminary Issue Report is published in response to a request by the GNSO Council for an Issue Report on the topic of Uniformity of Contracs, as a required preliminary step before a Policy Development Process (PDP) may be initiated. The objective of a possible PDP would be 'to evaluate whether a minimum baseline of registration abuse provisions should be created for all in-scope ICANN agreements, and if created, how such language would be structured to address the most common forms of registration abuse'[1].

1.2   Background

▪ Earlier reports on this topic (see October 2008 Issues Report and the RAPWG Final Report), describe the lack of uniformity of abuse[2] provisions among the currently delegated gTLD registry agreements, as well as the absence of specific abuse provisions in the Registrar Accreditation Agreement (RAA). Across the spectrum of existing registry agreements, there are elements of similarity but each contract (currently) is customized to the uniqueness of the respective registry's business model and operating conditions.

▪ In an attempt to develop a complete picture of the existing abuse provisions for this Issue Report, ICANN Staff reviewed 17 different gTLD registry and registry-registrar agreements, and several other publicly available documents on registry websites that relate to contractual rights and obligations associated with abuse (e.g., Acceptable Use Policies and Terms of Agreement). In general, Staff discovered:

1. Existing Registry Agreements generally do not include specific provisions to address abuse.

2. To the extent existing agreements address activities that might be defined as abuse, there is little in the way of common language across agreements to identify those activities.

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[1] See http://gnso.icann.org/en/resolutions#201110

[2] Abuse has been defined by the RAPWG in its Final Report as '*Abuse is an action that:*
- Causes actual and substantial harm, or is a material predicate of such harm, and
- Is illegal or illegitimate, or is otherwise considered contrary to the intention and design of a stated legitimate purpose, if such purpose is disclosed'.

3. Where registries include specific provisions for dealing with various types of abuse, there is evidence that the provisions can be effective.[3]

4. Regardless of whether the agreements contain registration abuse provisions, registration abuse still exists in the domain name industry[4].

1.4   Scope and Staff Recommendation

Staff has confirmed that a PDP regarding the potential development of uniform baseline Registration Abuse policies for use in ICANN contracts is within the scope of the ICANN's Policy processes and the GNSO. Consequently, Staff recommends that the Council initiate a Policy Development Process on this topic. Should the PDP proceed, Staff suggests that the working group conduct further research, as follows:

- Understand if registration abuses are occurring that could be addressed more effectively if consistent registration abuse policies were established;

- Determine if and how (registration) abuse is dealt with in those registries (and registrars) that do not have in place any specific provisions or policies to address abuse; and

- Identify how registration abuse provisions, where they exist, are implemented in practice and whether they are effective in addressing registration abuse.

- If the results of this research reveals that there is value in having uniform provisions to address registration abuse, the PDP WG should also consider a set of initial benchmarks for developing an initial baseline or framework of provisions to battle registration abuse, and define potential reporting requirements to track progress toward those goals.

- ICANN Staff is of the view that there may be benefits to establishing a consistent framework of registration abuse prevention that is applicable across gTLD registries and ICANN-accredited Registrars.

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[3] See for example http://www.afilias.info/node/332
[4] See for example http://www.spamhaus.org/, http://www.maawg.org/.

1.5   Next Steps

- A Final Issue Report will be published following the closing of the Public Comment Forum on this Preliminary Issue Report. After the delivery of the Final Issue Report, the GNSO Council will review, deliberate, and decide whether to initiate a PDP on this topic.

2.　Objective and Next Steps

This Preliminary Issue Report is published in response to a request by the GNSO Council for an Issue Report on the topic of Uniformity of Contracts, as a required preliminary step before a PDP may be commenced. The objective of a possible PDP would be 'to evaluate whether a minimum baseline of registration abuse provisions should be created for all in scope ICANN agreements, and if created, how such language would be structured to address the most common forms of registration abuse'.

This Report is designated as "preliminary" to allow for Community input and dialogue prior to the publication of the Final Issue Report. This Report will be updated to reflect such feedback in the Final Issue Report to be presented to the GNSO Council after the closing of the public comment forum.

3.   Background on Uniformity of Contracts

3. 1   Background on the process

The request for an Issue Report on this topic follows the work of the Registration Abuse Policies Working Group (RAPWG). The RAPWG was tasked by the GNSO Council with defining abuse, making a determination between registration abuse versus use abuse, defining the most common forms of abuse, and understanding the effectiveness of abuse provisions within agreements in order to identify and recommend specific policy issues and processes for further consideration by the GNSO Council.

The RAPWG produced the RAPWG Final Report in May 2010 (see http://gnso.icann.org/issues/rap/rap-wg-final-report-29may10-en.pdf). The RAPWG extensively deliberated, as part of its charter, the definition of abuse and determined:

> *Abuse is an action that:*
> - *Causes actual and substantial harm, or is a material predicate of such harm, and*
> - *Is illegal or illegitimate, or is otherwise considered contrary to the intention and design of a stated legitimate purpose, if such purpose is disclosed.*

The Working Group noted:
*   The party or parties harmed, and the substance or severity of the abuse, should be identified and discussed in relation to a specific proposed abuse.
*   The term "harm" is not intended to shield a party from fair market competition.
*   A predicate is a related action or enabler. There must be a clear link between the predicate and the abuse, and justification enough to address the abuse by addressing the predicate (enabling action).
*   This definition of abuse was influenced by the definition of "misuse" in the document "Working Definitions for Key Terms that May be Used in Future WHOIS Studies" prepared by the GNSO Drafting Team.

The RAPWG endeavored to catalogue and define the known types of abuse and to make a determination whether abuse is designated as a "registration" abuse versus a "use" abuse but did not achieve consensus regarding that delineation.[5] Ultimately, the RAPWG identified and defined 11 types of abuses (refer to the Final Report for specific definitions and deliberations):

- Cybersquatting
- Front-running
- Gripe sites
- Deceptive and/or offensive domain names
- Fake renewal notices
- Name spinning
- Pay-per-click
- Traffic diversion
- False affiliation
- Cross-TLD Registration Scam
- Domain kiting / tasting

The RAPWG Final Report contained an analysis of various types of abuse and created a series of recommendations for the GNSO Council to consider further exploration of policy development or best practices to mitigate registration abuse. The RAPWG identified a total of 14 recommended actions that could address various forms of registration abuse. Some recommendations addressed WHOIS access issues, fake renewal notices, UDRP Review, malicious use of domain names and several others. The specific recommendation ultimately prompting this Issue Report stated:

> "Evaluate whether a minimum baseline of registration abuse provisions should be created for all in scope ICANN agreements and if created, how such language would be structured to address the most common forms of registration abuse."[6]

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[5] While this topic is a necessary debate of scope for policy development, it will not be addressed within this Issue Report.

[6] The level of working group consensus for the recommendation was characterized as "strong support but significant opposition."

On 6 October 2011, the GNSO Council resolved to request an Issue Report 'to evaluate whether a minimum baseline of registration abuse provisions should be created for all in scope ICANN agreements, and if created, how such language would be structured to address the most common forms of registration abuse'.

3.2   Background of the Issue

Defining Uniformity of Contracts:

Uniformity of contracts is a simple concept and is applied in a variety of industries around the world (e.g., financial transactions, consumer/customer agreements, etc.). It generally has come to mean that each agreement or contract of a similar type is modeled in the same fashion, contains like provisions, and is essentially template driven. Uniformity breeds consistency and aids in contract compliance and monitoring for performance. However, uniformity can also inhibit differentiation and can make it difficult to accommodate various business models.

Reviewing Existing Forms of Industry Agreements:

The October 2008 Issues Report that led to the creation of the Registration Abuse Policies Working Group (RAPWG) and subsequent efforts within the RAPWG (see the RAPWG Final Report), reveals the lack of uniformity of abuse provisions among the currently delegated gTLD registry agreements and the absence of specific abuse provisions in the the RAA. Across the spectrum of existing registry agreements, there are elements of similarity but none of the contracts are template driven and each one is customized to the uniqueness of the respectitve registry's business model and operating conditions.

The table below provides a brief description of the four primary agreement types for the management and registration of domains combined with GNSO policy scope considerations,

including whether enforceable "Consensus Policies" may be developed to address registration abuse provisions.[7]

TABLE 1	
Contract	**Description**
Registry Agreement (RA)	The RA is an agreement formed between ICANN and the Registry Operator of a given Generic Top Level Domain. This Agreement is in scope for a GNSO PDP. In addition, Consensus Policies can be developed with respect to topics identified in the applicable registry agreement as appropriate for consensus policies. Also, the RA can be amended via negotiation at renewal. In some situations, Registries can also use the Registry Services Evaluation Process to achieve amendments to an RA or approval of a new registry service.
Registry-Registrar Agreement (RRA)	The RRA is an agreement formed between the Registry Operator of a given Generic Top Level Domain and ICANN Accredited Registrars choosing to sell registrations of second level domains within that registry. This agreement is within scope of a GNSO PDP. In addition, Consensus Policies can be developed with respect to topics identified in the applicable registry agreement as appropriate for consensus policies. In some situations, Registries can also use the Registry Services Evaluation Process to achieve amendments to an RRA or approval of a new registry service.
Registrar Accreditation Agreement (RAA)	The RAA is an agreement formed between ICANN and a Registrar providing registration of domain names within any Generic Top Level Domain. The RAA is considered within scope of a GNSO PDP. In addition, Consensus Policies can be developed with respect to topics identified in the RAA as appropriate for consensus policies. The RAA can also be amended by negotiation between registrars and ICANN.
Registration Agreement (RtA)	The RtA is an agreement formed between the Registrars providing registration of domain names for a given Generic Top Level Domain to the Registrants registering said domain name(s). This agreement is

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[7] For a more fulsome explanation of the scope considerations, please see Section 5 of this Issue Report.

	considered in scope for a GNSO PDP. In addition, Consensus Policies can be developed with respect to topics identified in the RAA as appropriate for consensus policies. Provisions within the RA & RAA do influence the provision requirements in the RtA. Amendments to the RtA are at the discretion of the Registrar.

The following diagram is meant to visually represent the relationships between the various counter-parties and the contracts that bind them. Additionally, nested relationships between the agreements themselves are depicted.

Agreement Relationship Diagram
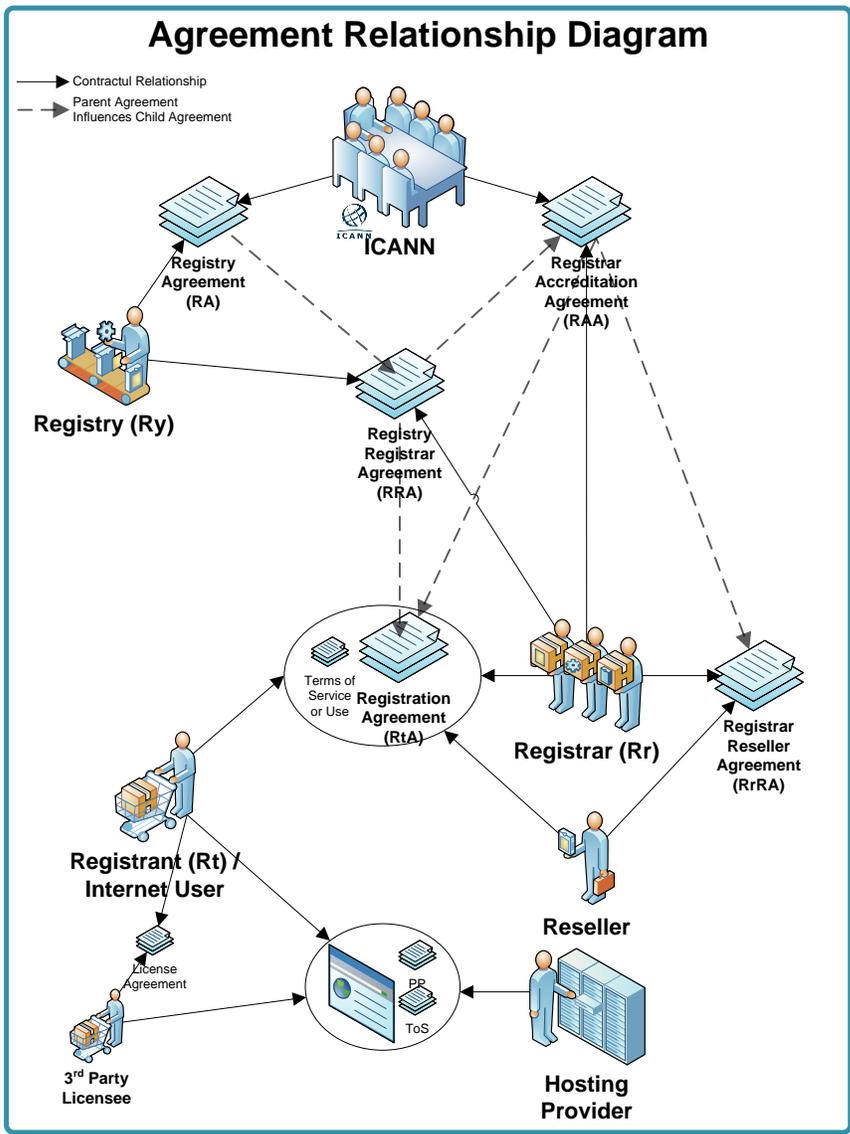
The industry trend appears to be toward some form of contract uniformity. Clearly this has been the direction for the New gTLD Program. For example, the new gTLD Registry Agreement will be template-driven and appendices will be amended as a result of negotiations between ICANN and each new gTLD Registry Operator to accommodate for differentiation of the TLD. Also, the Registrar Accreditation Agreement is based on a template "model" RAA, without negotiation for terms applicable to individual registrars, since 2001.[8]

Registration Abuse Timeline – A Brief History

The current effort to address registration abuse within the GNSO trace back to 2008. The table in Annex 3 sets forth the significant events, documents and reports regarding registration abuse over the last few years.

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[8] There are two operative model agreements: the 2001 and the 2009 RAA. In addition, negotiations are ongoing to achieve further universal modifications to the model agreement, and progress of those negotiations can be tracked at https://community.icann.org/display/RAA/Negotiations+Between+ICANN+and+Registrars+to+Amend+the+Registrar+Accreditation+Agreement.

4.   Assessment of Abuse Provisions in Existing Registry Agreements

4.1   Research Scope

In an attempt to develop a complete picture of current abuse provisions in existing industry agreements for this Issue Report, ICANN Staff reviewed 17 different gTLD registry and registry-registrar agreements, and several other publicly available documents on registry websites that relate to contract rights and obligations associated with abuse (e.g., Acceptable Use Policies and Terms of Agreement).

In general, Staff discovered:

- Existing Registry Agreements generally do not include specific provisions to address abuse
- To the extent existing agreements have chosen to address activities that might be defined as abuse, there is little in the way of common language to identify those activities.
- Where registries include specific provisions for dealing with various types of abuse, there is evidence that the provisions can be effective[9].
- Regardless of whether the agreements contain registration abuse provisions, registration abuse still exists in the domain name industry[10].

An overview of the Staff's research, including relevant provisions and findings, can be found in Annex 4.

A number of the agreement provisions Staff reviewed are relatively similar while others differ greatly. In most cases Staff found that the term 'abuse' has either not been defined in the existing agreements or is labelled as something else (e.g., as "illegal use" or as "going against the integrity and stability of the registry"). The existence of these provisions is not necessarily indicative of

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[9] See for example http://www.afilias.info/node/332
[10] See for example http://www.spamhaus.org/, http://www.maawg.org/.

specific abuse mitigation implementation by the Registries, but does provide a potential authoritative mechanism by which a Registry may act.

4.2 Specific Registry Agreement Provisions

With the exception of .com and .net, all of the other gTLD Registries reviewed contain some sort of abuse and/or take down provision within the Registry Agreement or the Registry Registrar Agreement. The gTLDs of .biz, .info, .name, and .pro contain a specific Registry-Registrar Agreements (RRA) provision to take down or cancel a domain registration. The following is the most common form found among those RRAs reviewed:

> *"…acknowledge and agree that <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) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of <REGISTRY>, as well as its affiliates, subsidiaries, officers, directors, and employees; (4) per the terms of the registration agreement or (5) to correct mistakes made by <REGISTRY> or any Registrar in connection with a domain name registration. <REGISTRY> also reserves the right to place upon registry lock, hold or similar status a domain name during resolution of a dispute."*

A subset of Sponsored Registries (.aero, .cat, .coop, .jobs, .museum, .travel, and .xxx) contain an "Appendix S" that outlines what types of entities may register a domain within the TLD, how the registered name may be used, and revocation or cancellation of the registration if in violation. Even so, none of the provisions specifically defines abuse. The following excerpt from the Appendix S of the .museum agreement is the most common provision found:

> *"2. Restrictions on what persons or entities may register Registered Names (which need not be uniform for all names within the Sponsored TLD), provided the scope of the Charter (Section 1 of this Attachment) is not exceeded.*

3. Restrictions on how Registered Names may be used (which need not be uniform for all names within the Sponsored TLD), provided the scope of the Charter (Part 1 to this Appendix S) is not exceeded.

4. Performance of Eligibility and Name-Selection Services (ENS Services), either directly by the Sponsor or by one or more organizations or individuals to which it delegates the responsibility for performing ENS Services, provided that revenues received in connection with ENS Services are used solely to defray the cost of providing ENS Services or otherwise sponsoring the Sponsored TLD, with allowance for accumulation of reasonable operating reserves.

5. Mechanisms for enforcement of the restrictions in items 2 and 3, including procedures for cancellation of registrations. See also Subsection 3.1(d)(i)(B)...."

4.3 Internal Registry Policies

With respect to policies defined internally to a Registry and agreed to by Registrants, such as Terms of Use or Anti-Abuse Policies, Staff research found no two alike among the Registries surveyed. Some Registries define abusive behavior, while some list specific abuse types. The remainder of the Registries generically define improper use and possible reasons for suspension or cancellation of the registration. These types of Registry-internal policies are considered out of scope with respect to Consensus Policy.

4.4 Recent Registry Agreement Activity – VeriSign's RSEP Proposal

In October 2011, Verisign, the Registry Operator for .com, .net, and .name, submitted an [RSEP request](#) to offer a Malware Scanning Service and proposed to also align its Registry-Registrar Agreement with the most common anti-abuse policy of existing gTLDs and in preparation for new gTLDs. The following is an excerpt from the RSEP:

Registry Registrar Agreements and would allow the denial, cancellation or transfer of any registration or transaction or the placement of any domain name on registry lock, hold or similar status as necessary:

(a) to protect the integrity, security and stability of the DNS;

(b) to comply with any applicable court orders, laws, government rules or requirements, requests of law enforcement or other governmental or quasi-governmental agency, or any dispute resolution process;

(c) to avoid any liability, civil or criminal, on the part of Verisign, as well as its affiliates, subsidiaries, officers, directors, and employees;

(d) per the terms of the registration agreement,

(e) to respond to or protect against any form of malware (defined to include, without limitation, malicious code or software that might affect the operation of the Internet),

(f) to comply with specifications adopted by any industry group generally recognized as authoritative with respect to the Internet (e.g., RFCs),

(g) to correct mistakes made by VeriSign or any Registrar in connection with a domain name registration, or

(h) for the non-payment of fees to VeriSign. VeriSign also reserves the right to place upon registry lock, hold or similar status a domain name during resolution of a dispute;

The RSEP Resquest was withdrawn several days after it was submitted.

4.5 Experiences of other registry operators

In its research Staff determined that several Registry operators have claimed successes in their mitigation abuse strategies with very little or no consequence to good faith registrants. Such examples were shared at the session at [ICANN 36 Meeting in Seoul – Forum on DNS Abuse](http://sel.icann.org/node/6961)[11] as well as the [Registry Stakeholder Group / ICANN Board session at ICANN 42](http://dakar42.icann.org/node/26909)[12] in Dakar. For example, Adam Palmer of .PIR noted that 'taken from the APWG study that was released, that dot org is one of the largest TLDs, with almost seven and a half, almost 8 million domain names. And we implemented our abuse policy in February. And you can see, for three months, it was among the top least-abused domains on the Internet'. As noted during these sessions, careful

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[11] ICANN 36 Meeting in Seoul – Forum on DNS Abuse - http://sel.icann.org/node/6961
[12] ICANN 42 Meeting in Dakar – RySG & ICANN Board Session http://dakar42.icann.org/node/26909

consideration and proper execution have accounted for many legitimate takedowns without false positives. The line between a false positive and a legitimate takedown requires a balance of abuse provisions with due process all the while recognizing risks of treading on free speech.

5.   Scope Considerations For A PDP on Uniformity of Contracts

Annex A, Section 4 of the ICANN Bylaws provides that the following six (6) elements should be considered in an Issue Report:

a) The proposed issue raised for consideration;

b) The identity of the party submitting the request for the Issue Report;

c) How that party is affected by the issue, if known;

d) Support for the issue to initiate the PDP, if known;

e) The opinion of the ICANN General Counsel regarding whether the issue proposed for consideration within the Policy Development Process is properly within the scope of the ICANN's mission, policy process and more specifically the role of the GNSO as set forth in the Bylaws.

f) The opinion of ICANN Staff as to whether the Council should initiate the PDP on the issue

5.1 Determining Scope

Initiation of a GNSO Policy Development Process requires that the issue at hand be within the scope of the ICANN Policy Process. Appendix A of the ICANN Bylaws requires the General Counsel's Office to certify that the issue is "within scope". In this case, it has been determined that a PDP on uniformity of registry and registrar contracts and agreements is indeed within the scope of the ICANN Policy Development Process.

Scope Considerations

Under the Bylaws, the GNSO is responsible for developing and recommending to the Board substantive policies relating to gTLDs. This mandate is by nature broader than what may constitute "consensus policies." The GNSO may initiate a Policy Development Process (PDP) on a topic that is within the GNSO Council's mandate, even if it might not ultimately result in a new "consensus policy" that is "within the picket fence." For example, the GNSO can conduct a PDP on topics

related to gTLDs that may result in other types of recommendations, such as advice to the ICANN
Board, creation of best practices, or other non-binding policies.

A topic is generally considered to be "within the picket fence" if it falls into subjects recognized
under the RAA or the applicable registry agreements[13] that, if recommended by the GNSO Council
(with the appropriate voting thresholds) and approved by the ICANN Board, could become
"consensus policies" binding upon all registrars and registries. For example the RAA describes a
series of topics where consensus policies could be developed in section 4.2 and in other sections of
the RAA. The Registry Agreements also have comparable sections.

A GNSO PDP may result in advice to the ICANN Board, recommendations for best practices, in
addition to developing "Consensus Policies" that are enforceable against the contracted parties in
accordance with their agreements. As a result, a GNSO PDP could be commenced on this topic in a
manner similar to that which was done in 2006, when the GNSO Council commenced a PDP on the
issues relating to ICANN's gTLD registry agreements.[14] That effort led to a GNSO recommendation
that was adopted by the ICANN Board in 2008.[15]

In determining whether the issue is within the scope of the ICANN policy process and the scope of
the GNSO, Staff and the General Counsel's office have considered the following factors:

5.2 Whether the issue is within the scope of ICANN's mission statement

The issue is considered within scope of ICANN's mission statement. The ICANN Bylaws state that:
"The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to
coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular

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[13] See, for example, RAA Section 4.2- Topics for New and Revised Specifications and Policies, posted at:
http://www.icann.org/en/registrars/agreements.html.
[14] For more information on the Feb06 PDP, please refer to: http://gnso.icann.org/issues/gtld-policies/council-
report-to-board-PDP-feb-06-04oct07.pdf.
[15] For more information on the Board's adoption of the GNSO recommendation in this regard, please see:
https://community.icann.org/display/tap/2008-01-23+-
+GNSO+Recommendation+on+Contractual+Conditions+for+Existing+gTLDs+%28PDP-Feb06%29.

to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, ICANN:

> 1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are
>
>> a. domain names (forming a system referred to as "DNS");
>>
>> b. Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and,
>>
>> c. protocol port and parameter numbers.
>
> 2. Coordinates the operation and evolution of the DNS root name server system.
>
> 3. Coordinates policy development reasonably and appropriately related to these technical functions."

The GNSO Council's resolution requesting this Issue Report seeks an evaluation of whether minimum baseline of registration abuse provisions should be created for all in-scope ICANN agreements, and if created, how such language would be structured to address the most common forms of registration abuse. This Issue Report describes a variety of provisions that exist in relevant registry and registrar contracts and related documents. The consideration of those options may have an impact impact the security and stability of the Internet as it could potentially reduce the instances of registration abuse.

The findings of the RAPWG Final Report support the determination that prevention of registration abuse is an important issue for the security and stability of the Internet and reflect critical challenges that merit policy consideration. Accordingly, this potential PDP is consistent with the ICANN mission to ensure the stable and secure operation of the Internet's unique identifier systems.

5.3 Whether the issue is broadly applicable to multiple situations or organizations.

The issue is considered broadly applicable to multiple situations and organizations. A consideration of registration abuse provisions would be broadly applicable to multiple situations or organizations, including each existing gTLD under contract with ICANN, each of 1000+ accredited registrars and many existing and potential registrants.

5.4 Whether the issue is likely to have lasting value or applicability, albeit with the need for occasional updates.

The development of uniform ICANN contract provisions (or best practices to address abuse) that are potentially applicable to the contracts to which ICANN is a party is likely to have lasting value and applicability. Registration abuse and malicious conduct on the Internet will likely never be completely eliminated, but reduction of registration abuse and malicious conduct should be a lasting and ongoing goal. Registration of domain names is a key element to restraining malicious conduct and thus maintains value and applicability to the mitigation of abuse. A consistent policy would also allow for consistent enforcement.

5.5 Whether the issue will establish a guide or framework for future decision-making.

The development of uniform ICANN contract provisions or best practices could serve as a guide or framework for future decision-making with respect to the prevention of registration abuse.

5.6 Whether the issue implicates or affects an existing ICANN policy.

The topic addresses potential general contract conditions that were either adopted through formal consensus policies, or are otherwise reflected in the current Registry Agreements and the RAA. Moreover, general contract conditions that were either adopted through formal consensus policies, or were otherwise reflected in the current form of RA, RRA and RAA might also be affected should new requirements be adopted as a result of this PDP.

6.   Staff Recommendation

The discussion in Section 5 above confirms that a PDP regarding the potential development of uniform baseline Registration Abuse policies for use in ICANN contracts and agreement is within the scope of the ICANN Policy Process and the GNSO. Consequently, Staff recommends that the Council initiate a formal Policy Development Process and charter a Working Group to pursue further research as follows:

- Understand if registration abuses are occurring that could be addressed more effectively if consistent registration abuse policies were established;
- Determine if and how (registration) abuse is dealt with in those registries (and registrars) that do not have any specific (policies) in place; and
- Identify how registration abuse provisions, where they exist, are implemented in practice and whether they are effective in addressing registration abuse.

In addition, certain providers may define acceptable use policies based on unique or relevant aspects of the services they offer. In examining the possibility of establishing a uniform or consistent framework, it would be useful to understand better whether Registries have unique requirements that may call for differing approaches and definitions.

If the results of this research reveals that there is value in having uniform provisions to address registration abuse, the PDP WG should also consider a set of initial benchmarks for developing an initial baseline or framework of provisions to battle registration abuse, and define potential reporting requirements to track progress toward those goals. This could be done by

- o   Referencing what has been implemented by other Registry Operators;
- o   Referencing possible changes to RAA via Negotiations and possible PDPs.

ICANN Staff is of the view that there may be benefits to establishing a consistent framework of registration abuse prevention that is applicable across ICANN-accredited Registries and Registrars. Any new framework of registration abuse should be flexible enough to deal with the rapidly changing environment in which registration abuse develops and takes place.

Given some of the latest industry efforts and the fact that abuse continues to be an ongoing issue, ICANN staff recommends that the GNSO Council initiate a PDP taking into account the approach outlined above.

Finally, noting the breadth and scope of the contractual relationships that could be impacted by this potential PDP, the GNSO Council is encouraged to take the time before the release of the Final Issue Report to review its current projects to determine available bandwidth for initiating an additional PDP. Additionally, the GNSO Council should consider whether there are any other industry participant efforts underway or near implementation to warrant the effort required of a formal PDP.

7.   Next Steps

A Final Issue Report will be published following the closing of the Public Comment Forum on this Preliminary Issue Report. After the delivery of the Final Issue Report, the GNSO Council will review, deliberate, and decide whether or not to initiate a PDP on this topic.

Annex 1 - GNSO Request for Issues Report; Motion to Address the Remaining Registration Abuse Policies Working Group Recommendations

Link to Resolution approved during 6 October 2011 GNSO Council meeting (originally made at 21 July 2011 meeting and deferred from 22 September 2011 meeting):

https://community.icann.org/display/gnsocouncilmeetings/Motions+22+September+2011

Made by: Zahid Jamil

Seconded by: Kristina Rosette

Whereas the Registration Abuse Policies (RAP) Working Group submitted its report to the GNSO Council on 29 May 2010 (see http://gnso.icann.org/issues/rap/rap-wg-final-report-29may10-en.pdf);

Whereas the GNSO Council reviewed the report and its recommendations and decided to form an implementation drafting team to draft a proposed approach with regard to the recommendations contained in the Registration Abuse Policies Working Group Final Report;

Whereas the Registration Abuse Policies Implementation Drafting Team submitted its proposed response to the GNSO Council on 15 November 2010 (see http://gnso.icann.org/correspondence/rap-idt-to-gnso-council-15nov10-en.pdf);

Whereas the GNSO Council considered the proposed approached at its Working Session at the ICANN meeting in Cartagena;

Whereas the GNSO Council acted on a number of RAP recommendations at its meeting on 3 February 2011 (see http://gnso.icann.org/resolutions/#201102);

Whereas the GNSO Council requested feedback from ICANN Compliance in relation to WHOIS Access recommendation #2 and Fake Renewal Notices recommendation #1 and a response was received on 23 February 2011 (http://gnso.icann.org/mailing-lists/archives/council/msg10766.html). In addition, a discussion with Compliance Staff was held at the ICANN meeting in San Francisco.

Whereas the GNSO Council considered the remaining RAP recommendations in further detail during its working session at the ICANN meeting in Singapore based on an overview prepared by ICANN Staff (see http://gnso.icann.org/correspondence/overview-rapwg-recommendations-18may11-en.pdf).

NOW THEREFORE BE IT:

RESOLVED, the GNSO Council thanks the ICANN Compliance Department for its feedback in relation to WHOIS Access recommendation #2 and determines that no further work on this recommendation is needed. The GNSO Council welcomes the commitment of the ICANN Compliance Department 'to report on compliance activities and publish data about WHOIS accessibility, on at least an annual basis' (see (http://gnso.icann.org/mailing-lists/archives/council/msg10766.html).

RESOLVED, the GNSO Council thanks the ICANN Compliance Department for its feedback in relation to Fake Renewal Notices recommendation #1 and determines that no further work on this recommendation is needed.

RESOLVED, the GNSO Council determines that additional information is needed from the Registrar Stakeholder Group with regard to the conditional Fake Renewal Notices recommendation #2 before an Issue Report should be requested of Staff. The GNSO Council hereby requests that the Registrar Stakeholder Group provide further information and data on the nature and scope of the issue of Fake Renewal Notices to help inform the GNSO Council's and its RAP WG deliberations on whether an Issue Report should be requested. A small group of volunteers consisting of registrar representatives and others interested (including former RAP WG members) should be formed to prepare such a request work with the Registrar Stakeholder Group to obtain the information requested and report back to the GNSO Council accordingly.

RESOLVED, in response to WHOIS Access recommendation #1, the GNSO Council requests the WHOIS Survey Drafting Team to consider including the issue of WHOIS Access as part of the survey it has been tasked to develop. If the WHOIS Survey Drafting Team is of the view that it is not appropriate or timely to include WHOIS Access as part of the survey, it should inform the GNSO Council accordingly so that the GNSO Council can determine what next steps, if any, might be appropriate at this stage in relation to this recommendation.

RESOLVED, with regard to the recommendation on Meta Issue: Collection and Dissemination of Best Practices, the GNSO Council acknowledges receipt of this recommendation and determines to defer its consideration until it evaluates the outcome of Malicious Use of Domain Names recommendation #1, which aims to develop best practices to help registrars and registries address the illicit use of domain names. In light of the pending request to Staff to develop a Discussion Paper on the Malicious Use of Domain Names, the GNSO Council believes that the upcoming review and analysis of this Discussion Paper may serve to inform the Council of the issues related to the Meta Issue: Collection and Dissemination of Best Practices recommendation.

RESOLVED, in regard to the recommendations on cross-TLD Registration Scam and Domain Kiting/Tasting, the GNSO Council Chair shall communicate to the Security and Stability Advisory Committee (SSAC) the findings of the RAP WG in this regard and request that the SSAC consider evaluating and/or monitoring these abuses. If the SSAC elects to conduct this work, the GNSO Council requests that the SSAC inform the GNSO Council if it believes that further policy work by the GNSO Council should be undertaken to address these two types of abuse. In addition, the GNSO Council suggests that the issue of cross-TLD registration scam be included in the agenda of its next meeting with the ccNSO Council since this type of abuse may also affect ccTLDs.

RESOLVED, in response to the recommendation on Meta Issue: Uniformity of Reporting, the GNSO Council acknowledges receipt of this recommendation, and hereby requests the ICANN Compliance Department to report on existing systems to report and track violations and/or complaints; improvements / changes made since the RAPWG Report or foreseen in the near future, and: identify gaps and any improvements that might be desirable but not foreseen at this stage. Further consideration of this Meta Issue, including the recommendations and considerations of the RAP WG in this regard, is deferred pending receipt of such information from the ICANN Compliance Department.

RESOLVED, in response to the recommendation on Uniformity of Contracts, the GNSO Council requests an Issue Report to evaluate whether a minimum baseline of registration abuse provisions should be created for all in scope ICANN agreements, and if created, how such language would be structured to address the most common forms of registration abuse.

RESOLVED, in response to the recommendations on Gripe Sites, Deceptive and/or Offensive Domain Names recommendation #2, and; Cybersquatting recommendation #2, since the RAPWG

did not achieve consensus on these recommendations, the GNSO Council defers undertaking further policy work on these recommendations at this time.

RESOLVED, in response to Gripe Sites; Deceptive and/or Offensive Domain Names recommendation #1, the GNSO Council acknowledges receipt of this recommendation, and agrees with the RAPWG that no further action is called for at this time.

Voting results (note, UofC was voted separately from all other RAP recommendations):

Contracted Parties House

6 Votes against: Tim Ruiz, Stéphane van Gelder, Adrian Kinderis absent, apologies – proxy vote to Tim Ruiz, Jeff Neuman, Jonathan Robinson, Ching Chiao

1 Vote in favour: Andrei Kolesnikov

Non-Contracted Parties House

13 Votes in favour: Jaime Wagner, Wolf-Ulrich Knoben, John Berard, Zahid Jamil, Kristina Rosette, David Taylor. Rafik Dammak, Mary Wong, Bill Drake, Wendy Seltzer, Debra Hughes, Rosemary Sinclair, absent, apologies - proxy vote to Mary Wong, Olga Cavalli

Annex 2 – GNSO Registration Abuse Policies Charter

Whereas GNSO Council Resolution (20081218-3) dated December 18, 2008 called for the creation of a drafting team "to create a proposed charter for a working group to investigate the open issues documented in the issues report on Registrations [sic] Abuse Policy".

Whereas a drafting team has formed and its members have discussed and reviewed the open issues documented in the issues report.

Whereas it is the view of the drafting Team that the objective of the Working Group should be to gather facts, define terms, provide the appropriate focus and definition of the policy issue(s), if any, to be addressed, in order to enable the GNSO Council to make an informed decision as to whether to launch PDP on registration abuse.

Whereas the drafting team recommends that the GNSO Council charter a Working Group to (i) further define and research the issues outlined in the Registration Abuse Policies Issues Report; and (ii) take the steps outlined below. The Working Group should complete its work before a decision is taken by the GNSO Council on whether to launch a PDP.

The GNSO Council RESOLVES:

To form a Working Group of interested stakeholders and Constituency representatives, to collaborate broadly with knowledgeable individuals and organizations, to further define and research the issues outlined in the Registration Abuse Policies Issues Report; and take the steps outlined in the Charter. The Working Group should address the issues outlined in the Charter and report back to the GNSO Council within 90 days following the end of the ICANN meeting in Mexico City.

CHARTER

Scope and definition of registration abuse – the Working Group should define domain name registration abuse, as distinct from abuse arising solely from use of a domain name while it is registered. The Working Group should also identify which aspects of the subject of registration abuse are within ICANN's mission to address and which are within the set of topics on which ICANN may establish policies that are binding on gTLD registry operators and ICANN-accredited registrars. This task should include an illustrative categorization of known abuses.

Additional research and identifying concrete policy issues – The issues report outlines a number of areas where additional research would be needed in order to understand what problems may exist in relation to registration abuse and their scope, and to fully appreciate the current practices of contracted parties, including research to:

- 'Understand if registration abuses are occurring that might be curtailed or better addressed if consistent registration abuse policies were established'
- 'Determine if and how (registration) abuse is dealt with in those registries (and registrars) that do not have any specific (policies) in place'
- 'Identify how these registration abuse provisions are (...) implemented in practice or deemed effective in addressing registration abuse'.

In addition, additional research should be conducted to include the practices of relevant entities other than the contracted parties, such as abusers, registrants, law enforcement, service providers, and so on.

The Working Group should determine how this research can be conducted in a timely and efficient manner -- by the Working Group itself via a Request for Information (RFI), by obtaining expert advice, and/or by exploring other options.

Based on the additional research and information, the Working Group should identify and recommend specific policy issues and processes for further consideration by the GNSO Council.

SSAC Participation and Collaboration

The Working Group should (i) consider inviting a representative from the Security and Stability Advisory Committee (SSAC) to participate in the Working Group; (ii) consider in further detail the SSAC's invitation to the GNSO Council to participate in a collaborative effort on abuse contacts; and (iii) make a recommendation to the Council about this invitation.

Workshop at ICANN meeting in Mexico City on Registration Abuse Policies - In order to get broad input on and understanding of the specific nature of concerns from community stakeholders, the drafting team proposes to organize a workshop on registration abuse policies in conjunction with the ICANN meeting in Mexico City. The Working Group should review and take into account the discussions and recommendations, if any, from this workshop in its deliberations.

The working group established by this motion will work according to the process defined in Working Group Processes.

Annex 3 – Registration Abuse Timeline

Date	Summary
20 JUN 2008	Afilias submits RSEP for Abusive Use Policy http://www.icann.org/en/registries/rsep/afilias-request-20jun08.pdf
06 AUG 2008	Afilias RSEP Approved without requirement to update to RRA http://www.icann.org/en/registries/rsep/afilias-abusive-domain-policy-request-rev-31jul08.pdf http://www.icann.org/en/registries/rsep/afilias-to-icann-06aug08.pdf
25 SEP 2008	GNSO Council directs ICANN Staff to create an Issue Report on Registration Abuse http://gnso.icann.org/resolutions/#20080925-1 http://gnso.icann.org/resolutions/#200809
07 OCT 2008	Afilias publicly announces Anti-Abuse Policy http://www.afilias.info/news/2008/10/07/afilias-announces-new-policy-make-info-even-safer-internet-users
29 OCT 2008	ICANN Staff publishes Issue Report on Registration Abuse Policies http://gnso.icann.org/issues/registration-abuse/gnso-issues-report-registration-abuse-policies-29oct08.pdf
18 DEC 2008	GNSO Council establishes a drafting team to develop a WG Charter based on the Issue Report created by ICANN Staff http://gnso.icann.org/resolutions/#20081218-3
05 FEB 2009	Public Interest Registry deploys Anti-Abuse Policy (did not use RSEP, existing RRA contained abuse provision) http://www.pir.org/why/anti_abuse_policy
19 FEB 2009	GNSO Council approves the drafting team charter and intimates the RAPWG to report back within 90 days after the ICANN 34 Meeting in Mexico City http://gnso.icann.org/resolutions/#20090219-2
02 MAR 2009	1st meeting of Registration Abuse Policies Working Group (RAPWG) at the ICANN 34 Meeting in Mexico City http://mex.icann.org/node/3133
13 AUG 2009	RAP Uniformity of Contracts sub-team begins
29 OCT 2009	ICANN 36 Meeting in Seoul – Forum on DNS Abuse, PIR/Adam Palmer Presentation describing success in combating registration abuse, 8 months after

	policy deployment http://sel.icann.org/node/6961
25 NOV 2009	RAP Uniformity of Contracts sub-team submits its report back to the Working Group for review and debate
12 FEB 2010	RAPWG submits draft Initial Report & conducts Public Comment period http://www.icann.org/en/news/public-comment/rap-initial-report-12feb10-en.htm
10 MAR 2010	RAPWG presents Initial Report at the ICANN 37 Meeting in Nairobi
29 MAY 2010	RAPWG submits Final Report to GNSO Council http://gnso.icann.org/issues/rap/rap-wg-final-report-29may10-en.pdf
20 JUN 2010	RAPWG Final Report presented to GNSO Council
15 JUL 2010	GNSO Council forms a Drafting Team to develop an RAP implementation plan based on the Working Group's recommendations
05 AUG 2010	GNSO Council reviews start date and availability of RAP Implementation Drafting Team
26 AUG 2010	RAP Status Update deferred to 08 SEP 2010 GNSO Council Meeting
08 SEP 2010	RAP Status provided to GNSO Council that RAP Implementation Drafting Team to start 13 SEP 2010
13 SEP 2010	RAP Implementation Drafting Team Begins
15 NOV 2010	RAP Implementation Drafting Team Concludes
08 DEC 2010	RAP Implementation Drafting Team Status deferred to 13 JAN 2011
13 JAN 2011	Fast Flux Recommendations attached to RAPWG Recommendations (Use = Out of Scope, or Best Practices for Malicious Use); RAPWG Topic deferred to 3 FEB 2011
03 FEB 2011	RAPWG Recommendations resolved (WHOIS Access #2, Fake Renewal Notices #1, Issue Report on UDRP, Discussion Paper on Malicious Use Best Practices) (Remainder of RAPWG recommendations added to GNSO Projects List) http://gnso.icann.org/resolutions/#20110203
19 MAY 2011	RAP Recommendations update
18 JUN 2011	ICANN 41 Singapore Uniformity of Contracts mentioned for first time at Council Saturday Working Session
06 OCT 2011	GNSO Council votes on remaining RAPWG recommendations and separately votes on the Uniformity of Contracts http://gnso.icann.org/resolutions/#201110

10 OCT 2011	VeriSign submits RSEP for Anti-Abuse Domain Use Policy
	http://www.icann.org/en/registries/rsep/verisign-com-net-name-request-10oct11-en.pdf
14 OCT 2011	VeriSign withdraws RSEP for Anti-Abuse Domain Use Policy

Annex 4 – Registry Agreements & Other Documents –

Summary Matrix

gTLD	Abuse/Take Down Provisions	Registry Agreement	Other Documents
.AERO	Yes	(Attachment 10 / #11), (Appendix S / Part II)	(Domain Management Policy / Section 16)
.ASIA	Yes	None Found	(General Registry Policies – Final Draft / Sections 4.3 & 5.2)
.BIZ	Yes	None Found	(RRA / Exhibit D, Section III)
.CAT	Yes	(Appendix S / Part II)	(Domain Name Registration Agreement / Sections 6 & 9)
.COM	No	None Found	None Found
.COOP	Yes	(Appendix S / Part II)	None Found
.INFO	Yes	None Found	(RRA / Section 3.6.5), (Domain Anti-Abuse Policy),
.JOBS	Yes	(Appendix S / Part VII)	(Application and Registration Agreement / Appendix C)
.MOBI	Yes	None Found	(RRA / Sections 3.8, 3.10, 5.2)
.MUSEUM	Yes	(Appendix S / Part II)	None Found
.NAME	Yes	None Found	(RRA / Section 3.6.6), (Acceptable Use Policy / Illegal Use Section)
.NET	No	None Found	None Found
.ORG	Yes	None Found	(RRA / Section 3.6.5), (Domain Anti-Abuse Policy)
.PRO	Yes	None Found	(RRA / Section 3.6), (End User Terms of Use / Section 4)
.TEL	Yes	None Found	(Acceptable Use Policy / Section 5.2)
.TRAVEL	Yes	(Appendix S / Part II)	(Registry Policy / 2.3.1, 7.3, 7.5)
.XXX	Yes	(Appendix S / Part VIII)	Yes (Registry-Registrant Agreement / Section 1,#8)