Fake Renewal Notices

Updated Report

STATUS OF THIS DOCUMENT

This is the updated report of the Fake Renewal Notices Drafting Team, that has been revised following review of public comments received on its report of 6 March 2012, in response to the GNSO Council's request of October 2011 (see http://gnso.icann.org/resolutions/#201110).

SUMMARY

This updated report is submitted to the GNSO Council in response to a request received from the Council pursuant to a motion proposed and carried during the Council meeting on 6 October 2011.

TABLE OF CONTENTS

1   Executive summary

Background

- Prior to acting on the recommendation of the Registration Abuse Policies (RAP) Working Group to request an Issue Report on fake renewal notices, the GNSO Council decided it would be desirable to gather further information on this issue and it therefore resolved: '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 no 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'.

-

- Thise DT is the report of the Fake Renewal Notices Drafting Team, which was subsequently formed to address this request, submitted its report to the GNSO Council on 6 March.
- Following submission of the report, the GNSO Council decided to put it out for public comment in order to receive community input on the report's findings and recommendations. Following the closing of the public comment forum, the GNSO Council decided to request the DT to review the comments received, update the report accordingly, if deemed appropriate, and report back to the GNSO Council accordingly.
- This is the updated report of the DT following review of the public comments received.

Approach

- The Fake Renewal Notices Drafting Team started by reviewing the relevant background information in relation to this issue (see section 4.1), requested clarification from ICANN staff on a number of questions (see section 4.2) and subsequently developed a survey for the registrar

community (see section 4.3). In addition, the DT reviewed the comments received in response to the public comment forum.

Survey

- Nineteen registrars responded to the survey, representing approximately 50% of all gTLD registrations under management. The results of the survey can be found in section 5.

<div style="float:right; border:1px solid red; padding:4px;">

Formatted: Bulleted + Level: 1 + Aligned at: 0" + Indent at: 0.25"
</div>

Analysis and Recommendations

- Section 6 provides an analysis of the survey responses, noting that the responses were split with registrars either viewing this as a serious problem or not a problem at all. Based on the analysis of the survey responses and further discussions, the DT also took the liberty to explore a number of options that the GNSO Council may with to consider as potential next steps to address the issue of fake renewal notices. These include:
  - Add a section to the RAA that addresses Business Practices
  - Add the issue to the current or one of the upcoming Inter-Registrar Transfer Policy (IRTP) PDPs
  - Add this issue to the upcoming PDP on the RAA
  - Add this issue to an upcoming PDP on WHOIS
  - Initiate a Narrowly-Focused Policy Development Process on Fake Renewal Notices
  - Refer the issue to the At-Large Advisory Committee (ALAC) to encourage better education and awareness of this type of abuse amongst the end-user community
  - Raise this issue with the Federal Trace Commission (FTC) in the United States to see if the registrar is in compliance with relevant law
  - ~~Initiate a Policy Development Process on Fake Renewal Notices~~
  - Do not proceed with any action at this time

<div style="float:right; border:1px solid red; padding:4px;">

Formatted: Bulleted + Level: 1 + Aligned at: 0" + Indent at: 0.25"
</div>

- As this report was developed by a small group of volunteers, the DT ~~would like to~~ recommended that the GNSO Council put this report out for public comment in order to obtain community input on the findings and potential next steps. That public comment period was completed on

<div style="float:right; border:1px solid red; padding:4px;">

Formatted: Bulleted + Level: 1 + Aligned at: 0" + Indent at: 0.25"
</div>

11-May, 2012. Results of those comments have been incorporated into this draft of the report and are available for review at the public comment forum.

2   Background

In its Final Report, the Registration Abuse Policies Working Group (RAPWG) recommended the GNSO Council that prior to considering the initiation of a Policy Development Process (PDP) on fake renewal notices, the issue should be referred to ICANN's Compliance Department 'for possible enforcement action, including investigation of misuse of WHOIS data'. As a result, the GNSO Council referred this issue to the ICANN's Compliance Department in February 2011. The ICANN Compliance Department responded to the request of the GNSO Council noting that it 'does not have the authority to enforce or act against "Fake Renewal Notice" abuse in all cases but we will investigate cases that are brought to our attention that concern ICANN-accredited registrars and take enforcement actions, if appropriate'. Following review of the response provided by ICANN Compliance's Department and further discussions, the GNSO Council decided that prior to acting on the conditional recommendation[1] of the RAPWG, it would be desirable to gather further information on the issue of fake renewal notices and it therefore resolved: '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'. As a result, the Fake Renewal Notices Drafting Team (FRN-DT) was formed which submitted its report to the GNSO Council on 6 March and which following review of the public comments received now hereby presents its updated report to the GNSO Council.

---

[1] The RAPWG recommends the initiation of a Policy Development Process by requesting an Issue Report to investigate fake renewal notices.

3   The Drafting Team & Approach

Following the circulation of a call for volunteers, a drafting team was formed consisting of the following members.

Name	Affiliation	Statement of Interest	Total # of meetings attended[2]
James Bladel	RrSG	James M. Bladel SOI	9
Paul Diaz	RySG	Paul Diaz SOI	5
Poncelet Ileleji	NCSG	Poncelet Ileleji SOI	5
Tatiana Khramtsova	RrSG	Tatiana Khramtsova SOI	6
Michele Neylon	RrSG	Michele Neylon SOI	5
Mike O'Connor	CBUC	Mikey O'Connor SOI	8
Ken Stubbs	RySG	Ken Stubbs SOI	3

The mailing list public archives are located at http://forum.icann.org/lists/gnso-frn-dt/.

The first meeting of the FRN-DT was held on 5 December 2011. The first meetings of the FRN-DT were dedicated to developing an approach to tackle the task it had been assigned. As a result, it identified the following steps:

- Review background information
- Define the issue
- Frame request and questions for the Registrar Stakeholder Group
- Frame questions for ICANN Staff to address
- Work with the Registrar Stakeholder Group to obtain information
- Analyze information obtained and develop recommendations

---

[2] For further details on the attendance records, please see
https://community.icann.org/display/gnsofakerenewaldraft/FRN+DT+Attendance+Sheet.

-    Report back to the GNSO Council

Further details on the development of the approach can be found on the DT workspace.

4   Information Gathering

4.1   Review Background Information

As part of its preparations, the FRN-DT reviewed the following background information:

- Transcript of the GNSO Council discussions on this issue that preceded the adoption of the resolution (see http://singapore41.icann.org/meetings/singapore2011/transcript-rap-18jun11-en.pdf – pages 4 – 29).
- RAP Final Report Section 5.4 – pages 42-43 (see http://gnso.icann.org/issues/rap/rap-wg-final-report-29may10-en.pdf)
- ICANN Compliance Response to Request for Feedback from GNSO Council
- Summary of Background Information - 7 December 2011.doc

4.2   Questions to ICANN Staff

In order to clarify certain issues, the FRN-DT raised a number of questions with ICANN Staff, which can be found hereunder with the responses provided by ICANN Staff.

Question: What measures, if any, are in place as part of the current registrar accreditation policy to prevent known offenders of sending fake renewal notices to become an ICANN accredited registrar?

Response: ICANN has recently modified the accreditation application process to ask for and check into more information about the background of applicants. The application and supporting documents submitted by the applicant have to show that it is eligible for accreditation as per Section II.A of the Statement of Registrar Accreditation Policy (http://www.icann.org/en/registrars/policy_statement.html#IIA), which means that ICANN would reject an application if the applicant cannot prove that it is eligible or if ICANN has any evidence that it isn't eligible.

Furthermore ICANN would also reject an application if the applicant and/or any of its officers, directors, manager or any person or entity owning (or beneficially owning) at least 5% percent of the

applicant is concerned by any reason for ineligibility as per Section II.B of the Statement of Registrar Accreditation Policy. One of these reasons is: "within the past ten years, has been convicted of a felony or of a misdemeanor related to financial activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that ICANN deemed as the substantive equivalent of any of these".

Question: As at first sight the issue of fake renewal notices seems to be mainly linked to resellers, is there anything in the new RAA (2009 RAA) that would provide more or better protections to address the issue of fake renewal notices if these are sent by resellers?

Response: the 2009 RAA modifications did not directly address fake renewal notices. Staff could check back to the 2009 suggested amendment topics to see if anyone even raised this issue back then. However, registrars are fully responsible for complying with every provision of the RAA, and the transfer policy, and applicable laws, for every registration / renewal / transfer that they make, whether they customer deals with the registrar directly or through an intermediary/agent/reseller.

If any registration / renewal / transfer is processed in violation of the agreement / policy (or applicable laws), then ICANN should be able to hold the registrar fully accountable. That allegedly fake renewal notices are supposedly linked mainly to resellers does not provide any safe harbor for any registration / renewal / transfer processed by any registrar. It should be taken into account that a reseller cannot process a registration, renewal or transfer except for through an accredited registrar.

4.3   Survey for Registrars

In order to obtain the input from the Registrar Stakeholder Group, the FRN-DT decided to develop a survey. The following questions were included in this survey:

- What is the source of fake renewal notices complaints you receive?
- Do you view the number of complaints related to fake renewal notices as a significant burden/cost or a rather minor issue?
- Have you observed a trend?

- Are you seeing the same players or are there new ones entering -- is it proliferating?

- Where are these fake renewal notices coming from?

- What country / countries are these fake renewal notices coming from?

- What is the mechanism you use to govern your resellers to prevent them from sending fake renewal notices?

- What is the impact of fake renewal notices on your operations and/or customers?

- Is there any other information or data that you think should be considered in relation to this topic or any other issues you would like to raise with the Fake Renewal Notices Drafting Team?

The survey was circulated to registrars via the Registrar Stakeholder Group on 6 January 2012. The results of the survey can be found in the next section.

4.4.   Review of Public Comments

As this report was developed by a small group of volunteers, the DT recommended that the GNSO Council put this report out for public comment in order to obtain community input on the findings and potential next steps. The GNSO Council agreed and opened a public comment forum. That public comment closed on 11-May, 2012. Results of those comments have been incorporated into this draft of the report and are available for review at the public comment forum (see also Annex A for the report of public comments).

5   Survey Results

1. Name (optional)
16 Responses

2. Affiliation (optional)
15 Responses

3. What is the source of fake renewal notices complaints you receive?			
Customers		16	80%
Other registrars		1	5%
Other, please specify		7	35%

Other:	
Respondent #	Response
1	We receive directly
2	Misdirected emails
3	We are a
4	Employees
5	recipients of the notices who do not know why or what they are receiving
6	Typically they are resellers of other registrars.
7	client inquiries

4. Do you view the number of complaints related to fake renewal notices as a significant burden/cost or a rather minor issue?			
Not very significant		9	47%
Significant burden		7	37%
Extremely burdensome		1	5%
Other, please specify		2	11%
Total		19	100%

Other	
Respondent #	Response
1	No significant volume, but significant customer confusion.
2	it seems to be on a recent upswing

5. Have you observed a trend? If so, is it:			
Up		2	11%
Down		2	11%
Steady		12	63%
Other, please specify		3	16%
Total		19	100%

Other	
Respondent #	Response
1	comes in waves
2	Periodically peaks and subsides in waves....but overall

		same level.	
3	Too few to comment		

6. Are you seeing the same players or are there new ones entering -- is it proliferating?			
Yes		6	32%
No		3	16%
Don't know		7	37%
Other, please specify		3	16%
Total		19	100%

Other	
Respondent #	Response
1	same entity all the time
2	Almost all from DROA / DROC
3	Some same, occasionally new

7. Where are these fake renewal notices coming from?			
An entity connected to ICANN		0	0%
Registrar		7	37%
Reseller		12	63%
Other, please specify		7	37%

Other	
Respondent #	Response

	1	Unknown entity, most likely resellers
	2	Names that are lost in this way end up at Brandon Gray Internet dba NameJuice
	3	Domain Registry of America, Domain Registry of Canada, Domain Registry of Europe
	4	uncertain as we receive the end-users requests to help find the source
	5	DROA
	6	Assuming reseller.
	7	Not sure

8. What country / countries are these fake renewal notices coming from?			
Canada		7	37%
United States		15	79%
United Kingdom		6	32%
Other, please specify		6	32%

Other	
Respondent #	Response
1	Unknown
2	it seems global
3	Combination of locations
4	Russia, China
5	From all over Asia
6	france

9. What is the mechanism you use to govern your resellers to prevent them from sending fake renewal notices?			
Contract		8	44%
Limiting capability through the API		1	6%
Combination of the above		2	11%
Not applicable		9	50%
Other, please specify		2	11%

Other	
Respondent #	Response
1	Trust
2	

10. What is the impact of fake renewal notices on your operations and/or customers?			
Cost		12	63%
Lost customers		7	37%
Other, please specify		10	53%

Other	
Respondent #	Response
1	I would say the greatest impact is simply user confusion and questions posed to customer service folks that could otherwise be avoided
2	Confusion
3	Frustrated customers, as we can't provide much help in recovering their name.

4	Loss of domains
5	support burden
6	Registrant Confusion
7	Confusion of customers.
8	wasted time
9	Time - explaining situation to customers
10	customer confusion

11. Is there any other information or data that you think should be considered in relation to this topic or any other issues you would like to raise with the Fake Renewal Notices Drafting Team?

9 Responses

Respondent #	Response
1	This kind of issue has a negative impact on our entire industry and needs to be stopped. CIRA was able to deal with it, why can't ICANN?
2	These notices are very misleading and deceptive, bordering on fraud. There also appears to be a number of private lawsuits and regulatory actions regarding this topic, which may help guide the group: http://en.wikipedia.org/wiki/Domain_name_scams#Timeline
3	Many fake notices ask for a "search engine renewal" (without further specification) which are drafted to be confused with renewal notices. IMHO those should be taken into account by the WG
4	Much of htre issue is dealing with confused cusomters that renew in good faith, and don't realise they have a problem until they are asked to transdfer their name, or they need to make a change to their registration. The incidence of the

		fraud as dropped off somewhat since the introuction of the authcode for transfers for .com etc.
	5	The majority of "fake renewal" and related scams original from the organisation calling itself Domain Registry of America (aka Domain Registry of Europe and other names they claim to be)
	6	It is an annoyance, not a major problem. A PDP would be overkill.
	7	Sending false notices of any sort should be prohibited in the RAA and this requirement should be enforced on resellers too. Resellers could additionally be name-and-shamed to prevent them from jumping over to a new registrar once they're shut down.
	8	Not a huge issue for us but in principal we find this practice highly objectionable. Seems similar to the "slamming" practice by long distance carriers in the 80's.
	9	Most of our clients are IP professionals and are very wary of any notice not issuing directly from us, so it's only a minor problem in volume terms, but an annoyance and bad for industry reputation.

6   Analysis & Recommendations

Analysis of the Survey Results

Respondents

As part of the analysis of the survey results, it should be noted that only 19 registrars responded to the survey, which provides a small sample size. At the same time, it might be worth pointing out that those that responded represent registrars with approximately 50% of all gTLD registrations under management.

Source of complaints

The source of fake renewal notice complaints primarily comes from customers looking to registrars for assistance.

Burden

The responses were split with registrars either viewing this as a serious problem or not a problem at all. Some registrars noted that they did not see a significant volume of complaints but that fake renewal notices do present a significant problem when they appear. A question the DT did not ask was 'what is your practice when people ask you to get involved'. This might explain some of the dispersion in these replies, if we were to find that there is a similar dispersion in the level of response by registrars; some registrars may not be getting involved and therefore see little impact, while others may get more involved and therefore feel a bigger burden. Should a PDP be initiated on this topic, it might be advisable to add this question.

Trend

The most common response was that this is in a steady state, no recent upward or downward trend has been noted.

Same players or new ones?

Given the deceptive practices involved, the conclusion is that fake renewal notices are mainly coming from the same entity, but solicitations are made under different names when targeting different locations. There were several responses to the survey from European registrars, which may explain some of the confusion about the source of fake renewal notices as there is more variety in the names used by those sending fake renewal notices aimed at European registrants.

Where are fake renewal notices coming from?

The predominant response to the survey was resellers, but this might be because of the history of the situation – at one point the main entities held responsible for sending fake renewal notices were acting as a reseller, but the DT understands that all these resellers are associated with one ICANN accredited registrar (see http://domainincite.com/domain-registry-of-america-still-slamming-still-scamming/ for further information). With regard to origin of the fake renewal notices, the following locations were identified: United States, Canada, United Kingdom, other (in order of responses received), although it is believed that the same party is responsible for the sending of these fake renewal notices.

What mechanisms are used to prevent fake renewal notices?

Half of the responding to this question noted 'not applicable' because they do not offer a reseller channel. The other half noted 'Contract' as the dominant tool of registrars that address the fake renewal notices issue.

Impact

Respondents list cost, lost customers, confusion, wasted time and impact on customer service as effects of fake renewal notices. Several respondents also note that fake renewal notices also reflect negatively on the domain name industry as a whole.

Other issues identified

Respondents to the survey noted that this phenomenon is expanding to include new scenarios – these solicitations are now sometimes combined with solicitations for other products such as search

engine optimization (SEO), hosting, etc. Some noted that there is also a security angle to this as registrants must provide authinfo codes and other credentials to this entity engaged in deceptive practices. It was noted that fake renewal notices is very similar to the practice know as "slamming" in the telecommunications industry and that perhaps a similar remedy (3rd party verification) might be explored to address the issue.

Some suggested that this practice is bad for the reputation of ICANN and the industry as a whole. There was one suggestion that ICANN initiate a "name and shame" reseller black list, perhaps paralleling the current practice of sharing abuse and spammer identities between registrars.

DT Recommendation

In addition to completing its assigned task 'to prepare such a[n information] request, work with the Registrar Stakeholder Group to obtain the information requested and report back to the GNSO Council accordingly' as outlined in the previous sections of this report, the DT also took the liberty to explore a number of options that the GNSO Council may wish to consider as potential next steps to address the issue of fake renewal notices based upon the information obtained. These options, including perceived pros, cons and the DT view can be found hereunder. However, the DT is conscious that this report, the analysis as well as proposed options were developed by a small group of volunteers, without the usual mechanisms allowing for broad community input and consultation. As a result, the DT would like to encourage the GNSO Council to put this report, including or excluding the proposed options for next steps, out for public comment. Should the Council agree with this recommendation and put the report out for public comment, the DT would remain available to review and/or address any comments received, if deemed appropriate by the GNSO Council.

Options for Potential Next Steps

The DT discussed the following options and would like to put these forward as potential options for next steps to the GNSO Council for further consideration. It should be emphasized that these options are not necessarily mutually exclusive. For each of the options, the DT has included its view on whether or not the option in question should be pursued.

1. **Add a section to the RAA that addresses Business Practices**

Registrars, working with ICANN Staff, initiate the process to develop and add language to the appropriate section of the RAA to address fake renewal notices. Registrars could consider raising this as part of the negotiations on the RAA that are currently ongoing. The proposed section could follow a similar approach as the current provision 3.7.3 of the RAA[3] , for example: Registrar shall not and shall ensure that its resellers will not, in trade or commerce in connection with domain name registration, transfer, renewal or otherwise, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

Pro

- Fewer resources required
- Less time required compared to a PDP
- More targeted work
- More targeted solution

Con

- Process is not as transparent as a PDP
- Caution would be required to ensure that the proposed wording of the new provision does not cause more problems than it solves
- New provision would only apply upon renewal of agreement by each respective registrar and not upon implementation like is the case with consensus policies

Drafting Team View

The DT considers this option worthy of further discussion by the GNSO Council and considers this the preferred approach.

---

[3] Registrar shall not represent to any actual or potential Registered Name Holder that Registrar enjoys access to a registry for which Registrar is Accredited that is superior to that of any other Registrar accredited for that Registry.

2. Add the issue to the current or one of the upcoming Inter-Registrar Transfer Policy (IRTP) PDPs

As the issue of fake renewal notices also relates to the IRTP, it could also be considered that the existing IRTP Part C WG or one of the future IRTP PDPs consider this issue in further detail for example by exploring the addition of a provision which specifically states that a registrar may not initiate a transfer for any name where the registrar or one of its resellers failed to clearly label the solicitation/advertisement with some mandatory and prominent notice that the ad was an application to transfer the domain to a different registrar and not just a renewal invoice from the current registrar.

Pro

- Compared to the previous approach (section in the RAA) this provision would be more targeted to the specific issue at hand
- Including it in one of the IRTP PDPs might be considered less controversial than adding it to the RAA which is already the subject of negotiations and a PDP
- Addressing it through consensus policy instead of contract negotiations allows for broad community input as part of the PDP

Con

- The narrow approach might not address other variations of the same kind of abuse
- If the issue is to be added to one of the future PDPs, it might mean it will take some time before it will get addressed as the next IRTP PDP will not start until the current one (IRTP Part C) has finalized

DT View

The DT considers this option worthy of further discussion by the GNSO Council.

3. Add this issue to the upcoming PDP on the RAA

Add the issue of fake renewal notices to the scoping conversation that is currently under way with regard to the ICANN Board-initiated PDP on the Registrar Accreditation Agreement (RAA).

Pro

- Leveraging resources that are already committed to studying similar issues
- May be a shorter start-up cycle to get the conversation started

Con

- This issue may be neglected as the conversation focuses on more serious or pressing issues
- May divert resources away from more important issues
- Not clear whether, from a timing perspective, if it will be possible to add this issue to the scoping conversations for this PDP, which might mean it could take months before it would be clear whether it would be possible to add this issue to the RAA PDP

Drafting Team View

The DT is of the opinion that this option is worthy of a broader discussion by the GNSO Council, but it is not the preferred option of the DT.

4.   Add this issue to an upcoming PDP on WHOIS

Add the issue of fake renewal notices to the scoping conversations that are currently under way with regard to the upcoming WHOIS PDPs, given that this activity depends on the improper use of WHOIS data in order to contact registrants.

Pro

- Leveraging resources that are already committed to studying similar issues
- May be a shorter start-up cycle to get the conversation started

Con

- This issue may be neglected as the conversation focuses on more serious or pressing issues
- May divert resources away from more important issues

Drafting Team View

The DT is of the opinion that this option is worthy of a broader discussion by the GNSO Council, but it is not the preferred option of the DT.

5.   Initiate a Narrowly-Focused Policy Development Process on Fake Renewal Notices

The GNSO Council could initiate a Policy Development Process on fake renewal notices by requesting an Issue Report.

Pro
-    Provides all the usual benefits of a PDP
-    Discussion and awareness across the broader community of the issues related to fake renewal notices
-    Opportunity for fact-finding and discussion of alternative approaches
-    Opportunity to refine a "fast track" PDP approach

Con
-    Contention for scarce PDP resources
-    This is a narrow issue, which appears to be confined to a small number of miscreants
-    A PDP can take a long time, although this could be mitigated by careful management of the process with an emphasis on narrow scope and short interval scheduling.

Drafting Team View

The DT is of the opinion that this option is worthy of a broader discussion by the GNSO Council, but it is not the preferred option of the DT.

4.6. Refer the issue to the At-Large Advisory Committee (ALAC) to encourager better education and awareness of this type of abuse amongst the end-user community

As the survey also demonstrated that end-users are often confused about these kinds of notices and might not be aware of what the implications are of responding to these notices, additional education and awareness raising might be beneficial to address this type of abuse. As a result, the GNSO Council could consider referring this issue to the ALAC who might be in a better position to determine what activities and/or information development might be appropriate to inform end-users about fake renewal notices.

Pro

- Broader awareness of this type of abuse might avoid end-users from being misled and deceived

Con

- Awareness raising / education might not fit with the existing mandate of the ALAC which is to 'provide advice on the activities of ICANN, insofar as they relate to the interests of individual Internet users' and may, as a result, have budget implications

DT View

The DT supports this option and wishes to point out that this option is considered complementary to the other options outlined in this section of the report.

5.7. Raise this issue with the Federal Trade Commission (FTC) in the United States to see if the registrar is in compliance with relevant law

As the DT learned from its information gathering, that the FTC reach a settlement in 2003 with one of the parties involved in this practice, it could be explored whether it would be worth raising this issue again with the FTC to determine whether the party is in breach of the settlement or whether other avenues could be explored as this practice still exists. Possibly a request could be made for ICANN Compliance to refer this issue to the FTC.

Formatted: Keep with next

Pro

- It would place the issue in a well-established legal framework
- Potentially leverages previous legal action

Con

- If the miscreant is outside the jurisdiction of the FTC, this approach will not work
- Large-scale solution to a narrowly defined problem

DT View

The DT supports this approach if it is determined that it will work.

6. Initiate a Policy Development Process on Fake Renewal Notices

The GNSO Council could initiate a Policy Development Process on fake renewal notices by requesting an Issue Report.

Pro

- Provides all the usual benefits of a PDP
- Discussion and awareness across the broader community of the issues related to fake renewal notices
- Opportunity for fact-finding and discussion of alternative approaches

Con

- Contention for scarce PDP resources
- This is a narrow issue, which appears to be confined to a small number of miscreants
- A PDP can take a long time

Drafting Team View

The DT is of the opinion that this issue does not warrant a PDP at this stage.

7.8. Do not proceed with any action at this time

The GNSO Council could decide not to take any action at this time.

Pro

- The least resources required

Con

- Does not provide ICANN Compliance with any assistance in defining or addressing the fake renewal notices issue
- Does not respond to the concerns of registrars who view this as a serious issue
- Does not help address the negative perception that is created by not addressing the fake renewal notices issue

Drafting Team View

The DT does not support this approach.

Formatted: Heading 1

Annex A – Report of Public Comments

Title:	Fake Renewal Notices Report		
Publication Date:	15 May 2012		
Prepared By:	Marika Konings		

Comment Period:		**Important Information Links**
Open Date:	21 March 2012	Announcement
Close Date:	11 May 2012	Public Comment Box
Time (UTC):	23:59 UTC	View Comments Submitted

Staff Contact:	Marika Konings	Email:	Policy-staff@icann.org

Section I: General Overview and Next Steps

Fake renewal notices are misleading correspondence sent to registrants from an individual or organization claiming to be or to represent the current registrar. These are sent for a variety of deceptive purposes. The desired action as a result of the deceptive notification is:

- Pay an unnecessary fee (fraud)
- Get a registrant to switch registrars unnecessarily ("slamming", or illegitimate market-based switching)
- Reveal credentials or provide authorization codes to facilitate theft of the domain

The Registration Abuse Policies Working Group discussed this type of abuse in its Final Report [PDF, 1.73 MB] and recommended that 'the GNSO initiate a Policy Development Process by requesting an Issues Report to further investigate this abuse'. In order to help inform its deliberations on this recommendation, the GNSO Council requested that a small group of volunteers prepare a request for information concerning Fake Renewal Notices for the Registrar Stakeholder Group. The Fake Renewal Notices Drafting Team (DT) which was formed subsequently has submitted its report [PDF, 559 KB] to the GNSO Council in which it presents the results of the survey it conducted as well as offering the following options for possible next steps:

- Add a section to the RAA that addresses Business Practices
- Add the issue to the current or one of the upcoming Inter-Registrar Transfer Policy (IRTP) PDPs
- Add this issue to the upcoming PDP on the RAA
- Refer the issue to the At-Large Advisory Committee (ALAC) to encourage better education and awareness of this type of abuse amongst the end-user community
- Raise this issue with the Federal Trace Commission (FTC) in the United States to see if the registrar is in compliance with relevant law

- Initiate a Policy Development Process on Fake Renewal Notices
- Do not proceed with any action at this time

As the report was developed by a small group of volunteers, the Fake Renewal Notices DT recommended that the GNSO Council put this report out for public comment in order to obtain community input on the findings and potential next steps. Following the presentation of the report, the GNSO Council decided to follow the DT's recommendation and put the report [PDF, 559 KB] out for community input. Now that the public comment forum has closed, the GNSO Council will consider next steps.

Section II: Contributors

At the time this report was prepared, a total of six (6) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials	
At-Large Advisory Committee	At-Large Staff	ALAC	

Individuals:

Name	Affiliation (if provided)	Initials	
Russ		RS	
Domain Administrator		DA	
Joshua Todd Cowper		JC	
Eva Gaertner		EG	
Gareth R. Shearman	Victoria Free-Net Association	GS	

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

RS notes that the report does not describe the difference between 'a fake renewal notice, an advertising offer, and phishing attempts' which in his view should be treated differently. EG notes that an area that was not covered in the report relates to notices 'from registrars stating that an entity is attempting to register domain names that are the same as your trademarks'. RS furthermore points out that certain entities, as a result of complaints made to the Federal Trade Committee (FTC), have actually changed from fake renewal notices to sending advertising offers.

DA points to a number of cases where the FTC and the Advertising Standards Authority (ASA) took

enforcement action addressing fake renewal notices and notes that 'ICANN should leave the review of marketing/advertising material to the authorities in each jurisdiction'.

Both RS and JC point out the link with Whois as the contact information to send these notices is obtained from publicly available Whois data. RS suggests that this issue is considered in conjunction with other Whois efforts that are ongoing.

ALAC and GS are of the view that immediate action should be taken to address the issue of fake renewal notices. ALAC notes that 'ICANN and the GNSO should take this token issue and use it to demonstrate that it can indeed enact change swiftly when it is warranted'. In relation to the potential next steps identified in the report, ALAC questions the feasibility of some of these and suggests an alternative approach. The ALAC suggests that a policy development process (PDP) is launched to accomplish what the drafting team outlined in its preferred approach, adding a section to the RAA that addresses business practices, as 'such a PDP would require a very minimal amount of work' and could be achieved in the minimum time needed to complete a PDP, while if it would be part of a new RAA it could take up to five years to take effect.

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

The GNSO Council will be responsible for analyzing the comments received and deciding on next steps.