

March 28, 2010

Registrar Stakeholder Group Position on Registration Abuse Policies Initial Report

BACKGROUND

In March 2010, the Registrar Stakeholder Group (“RSG”) was asked to provide feedback regarding the Registration Abuse Policies Initial Report (“RAP Initial Report”). This Position Paper captures the overall sentiment expressed by the RSG Members who provided feedback about this matter. Due to time constraints, however, no formal vote regarding this Position Paper was taken.

RSG POSITION

There are a variety of issues contained in the RAP Initial Report and these issues are of great interest to RSG Members. RSG Members look forward to gathering more information, discussing the issues, and sharing additional comments with the Registration Abuse Policies Working Group (“RAP WG”) in the future.

1. The RAP WG Should Determine Where ICANN's Policy-Making Boundaries Extend with Respect to Registration Abuse Issues and Use Issues.

The RSG is troubled by the wide ranging scope of issues that the RAP Initial Report encompasses. The RSG believes that, in some instances, the RAP WG has considered issues that are more appropriately categorized as "use abuses" rather than "registration abuses."

It is clear from the Initial Report that the RAP WG attempted to establish a registration abuse definition that considered the material differences between abusive domain name registration as opposed to abusive domain name use. The RSG believes, however, that the RAP WG considered a variety of domain name "use issues" that are outside ICANN's mission and policy-making boundaries. In particular, issues such as "gripe sites" and "malicious use of domain names" stray into the area of content control and, clearly, reside well outside the scope of ICANN's policy-making boundaries.

While registrars are committed to minimizing abuse in the DNS, there are limits to the responsibilities, or even capabilities, of registries and registrars when a domain name is abused. The RAP WG has concentrated much of its effort on consideration of domain name Use Issues that far exceed these limitations. The RAP WG must be mindful that neither ICANN nor its Supporting Organizations can be considered responsible for regulating or policing Internet content, in any fashion. Accordingly, the RSG urges the RAP WG to orient its activity to registration abuse that is within the scope ICANN's policy-making boundaries.

2. It Is Premature to Initiate a Policy Development Process to Consider How Rights Protection Mechanisms Developed in the New gTLD Program Can Be Applied to Cybersquatting in the Existing gTLD Space.

The RAP WG was almost evenly split regarding whether a PDP should be initiated to consider how Rights Protection Mechanisms ("RPMs") developed in the new gTLD program can be applied to cybersquatting in the existing gTLD space. The RSG agrees with the view that a PDP regarding this issue is premature.

The community has engaged in a tremendous volume of discussion and debate regarding RPMs for new gTLDs and many of the proposed RPMs have been met with controversy among community stakeholders. Because the effectiveness and consequences of the proposed RPMs in the new gTLD program are unknown, discussion of new RPMs should continue within the limits of the new gTLD program. In the RSG's view, real world experience with new RPMs is strongly recommended before considering their incorporation or relation (if any) to the existing gTLD space.

3. The RSG Opposes Creation of an Issues Report to Evaluate Whether a Minimum Baseline of Registration Abuse Provisions is Necessary.

Several members of the RAP WG supported the recommendation that an Issues Report be created 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. The RSG opposes this recommendation.

A minimum baseline of registration abuse provisions is not necessary because all registries, registrars, and registrants are already contractually obligated to abide by ICANN policies, notably existing or new Consensus Policies. The Consensus Policy process is a mechanism specifically designed to create uniformity where it is needed. If there is a registration abuse that needs to be addressed, it should be specifically identified, and a specific Consensus Policy crafted to deal with it.

Establishing a minimum baseline of registration abuse provisions for all in-scope ICANN agreements may also have unintended consequences. For example, many registrars already have well-developed internal registration abuse processes. If a minimum baseline of registration abuse provisions was established there is a risk that some registrars may abandon their processes in favor of the mandated minimum baseline. These registrars may prefer to adopt the minimum baseline rather than assume any additional liability associated with their existing internal abuse processes.

Furthermore, if a minimum baseline of registration abuse provisions is mandated then ICANN is likely exposed to additional risk. Registrars will seek indemnification from ICANN for any resulting harm if an impacted registrar demonstrates that it followed ICANN's mandated abuse provisions.

Rather than establishing a minimum baseline of registration abuse provisions, the RSG supports consideration of possible abuse contact best practices. For example, a recommendation was published by the ICANN Security and Stability Advisory Committee ("SSAC") in SAC 038 regarding registrar abuse contact practices. In this report the SSAC recommended that registrars assist in the investigation and mitigation of abuses and illegal activities by providing an abuse contact that is published prominently on registrar web pages. The report further recommended that the abuse point of contact be responsive by answering telephone and email inquiries responsibly. In the RSG's view, alternative recommendations such as this serve the community more effectively than a minimum baseline of registration abuse provisions.

CONCLUSION

The opinions expressed by the RSG in this Position Paper should not be interpreted to reflect the individual opinion of any particular RSG Member.