

Stress Test #37: ICANN adopts standards for what constitutes “abuse” deserving of domain termination. ICANN strongly enforces the new gTLD registrar contract provision to investigate and respond to reports of abuse”, requiring the termination of some name registrations.

ICANN also insists that legacy gTLD operators adopt the new gTLD contract upon renewal.

Consequence(s): By deciding what constitutes “abuse” deserving of domain termination, ICANN effectively becomes a regulator of conduct and content on registrant websites.

The NTIA requirement requiring that the openness of the Internet be preserved is thereby failed.

EXISTING ACCOUNTABILITY MEASURES

PROPOSED ACCOUNTABILITY MEASURES

The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.

Affected registrants may file comments on the proposed gTLD contract renewals.

Affected registrants and users have no standing to use IRP to challenge ICANN decision.

The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.

The proposed IRP allows any materially affected party to challenge ICANN’s enforcement actions, resulting in a binding decision. A domain registrant who faces the termination of their domain as a result of an ICANN policy would be deemed to be materially affected by that policy. The IRP challenge could assert that RAA provision was not the result of consensus policy and/or violates Mission Statement, Commitments and Core Values in amended bylaws.

The IRP standard of review would look at revised ICANN bylaws, including a Core Values. The IRP has the power to declare invalid an ICANN policy on the grounds that it is inconsistent by the bylaws, and to require it to desist from enforcing such an invalid policy..

CONCLUSIONS:

Existing measures would not be adequate to challenge ICANN enforcement decision.

Proposed measures would be adequate to challenge ICANN enforcement decision.