

1 **Stress Test #29:** (Similar to #23) ICANN strongly enforces the new gTLD registrar contract provision to investigate and respond to reports of abuse, resulting in terminations of some name registrations.

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

3 **Consequence(s):** ~~ICANN effectively becomes a regulator of conduct and content on registrant websites. None to registrars, as the registrars are obligated to comply with all provisions of their contracts with ICANN, whether or not ICANN “strongly enforces” the contract. Furthermore, the name registrations would only have been terminated if the registrars had found that the claims of abuse were true.~~

34 ~~However, registrants may believe that their name registrations were wrongly terminated and may wish to seek recourse against their registrar and/or ICANN..~~

| EXISTING ACCOUNTABILITY MEASURES | PROPOSED ACCOUNTABILITY MEASURES |
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45 ~~None needed with regard to registrars, as the registrars are obligated to comply with all provisions of their contracts with ICANN, and the name registrations would only have been terminated if the registrars had found that the claims of abuse were true. The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.~~

6 ~~Affected-Terminated registrants may submit a complaint to their registrars, asserting that their name registrations were wrongly terminated for abuse. file comments on the proposed gTLD contract renewals.~~

57 ~~Terminated registrants may also submit a complaint to ICANN, alleging that the registrar violated its terms of service by wrongly terminating the name registrations.~~

68 ~~Affected-Terminated registrants and users have no standing to use IRP to challenge ICANN decision.~~

79 ~~None needed with regard to registrars, as the registrars are obligated to comply with all provisions of their contracts with ICANN, and the name registrations would only have been terminated if the registrars had found that the claims of abuse were true. The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.~~

810 The proposed IRP allows any aggrieved party to challenge any action by ICANN’s enforcement actions, resulting in a binding decision. The terminated registrants and/or any affected users could commence IRP challenges ~~could~~ asserting that ICANN’s enforcement of the RAA provision constitutes “policy” that was not the result of consensus policy and violates Mission Statement, Commitments and Core Values in amended bylaws.

9 The IRP ~~standard of review panel~~ would look at revised ICANN bylaws, including a Core Value requiring policies “that are developed through a bottom-up, consensus-based multistakeholder process”. ~~However, this would be~~

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incorrect and inappropriate, since ICANN's enforcement decisions do not constitute policies that need to be "developed through a bottom-up consensus-based multistakeholder process."

CONCLUSIONS:

^{4.11} Existing measures would not be adequate to allow terminated registrants and affected users to challenge ICANN enforcement decision.

^{4.12} Proposed measures would be adequate to allow terminated registrants and affected users to challenge ICANN enforcement decision.

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| <p>4213 Stress Test #29(a):</p> <p>4314 ICANN insists that legacy gTLD operators adopt the new gTLD contract upon renewal.</p> <p>4415 Consequence(s): ICANN effectively becomes a regulator of conduct and content on registrant websites. Legacy gTLD operators are forced to execute and comply with a contract that they didn't want to enter into.</p> | |
| <p>EXISTING ACCOUNTABILITY MEASURES</p> | <p>PROPOSED ACCOUNTABILITY MEASURES</p> |
| <p>15 The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.</p> <p>16 Affected registrants may file comments on the proposed gTLD contract renewals.</p> <p>17 Affected registrants and users have no standing to use IRP to challenge ICANN decision.</p> <p>18 <u>Legacy TLD operators could commence a Request for Reconsideration and an IRP to challenge ICANN's actions in forcing the operators to sign the new gTLD contract.</u></p> <p>19 <u>Legacy TLD operators could commence litigation against ICANN claiming abuse of monopoly power.</u></p> <p>4720 <u>ICANN SOs, ACs, SGs, or Constituencies could commence a Request for Consideration and an IRP to challenge ICANN's actions in forcing the operators to sign the new gTLD contract.</u></p> | <p>18 The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.</p> <p>4921 The proposed IRP allows any aggrieved party to challenge <u>any action by ICANN's enforcement actions</u>, resulting in a binding decision. The IRP challenge could assert that <u>RAA provision forcing legacy gTLD operators to adopt the new gTLD agreement constituted "policy" that was not the result of consensus policy and violates Mission Statement, Commitments and Core Values in amended bylaws.</u></p> <p>22 The IRP <u>panel standard of review</u> would look at revised ICANN bylaws, including a Core Value requiring policies <u>"that are developed through a bottom-up, consensus-based multistakeholder process"</u>.</p> <p>2023 <u>The CCWG expresses no opinion regarding the outcome of such an IRP, the validity of the assertions described above or the application of the revised ICANN bylaws to this hypothetical.</u></p> |
| <p>CONCLUSIONS:</p> <p>2424 Existing measures would not be adequate <u>for affected registrants or users</u> to challenge ICANN <u>enforcement decision</u> action <u>in forcing legacy gTLD operators to sign a contract of adhesion.</u></p> | <p>2225 Proposed measures would be adequate <u>for all parties</u> to challenge ICANN's <u>enforcement decision</u>.</p> |

Existing measures would be adequate for legacy gTLD operators and for SO/AC/SG/C's.

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| <p>2326 Stress Test #30: (Similar to #23 and #29) ICANN terminates registrars for insufficient response to reports of copyright abuse on registered domains.</p> | |
| <p>2427 Consequence(s): ICANN effectively becomes a regulator of conduct and content on registrant websites. None, so long as the registrars' actions constituted a material breach of the RAA. If the registrars' actions did not constitute a material breach of the RAA, these registrars could claim that the contracts were wrongfully terminated.</p> | |
| <p>EXISTING ACCOUNTABILITY MEASURES</p> | <p>PROPOSED ACCOUNTABILITY MEASURES</p> |
| <p>25 The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.</p> <p>2628 Affected registrars could challenge ICANN's termination decisions with Reconsideration or IRP, although the standard of review is only on whether ICANN followed process.</p> <p>2729 Affected registrants and users have no standing to use IRP to challenge ICANN decision. <u>However, registrants and users would likely have no claim, as long as the registrations were transferred to a new registrar, so the lack of standing is likely not an issue.</u></p> | <p>28 The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.</p> <p>2930 The proposed IRP allows any aggrieved party to challenge <u>any action by ICANN's enforcement actions</u>, resulting in a binding decision. IRP challenge could assert that <u>the RAA provision resulting in termination was required to be developed as consensus policy, was</u> not the result of consensus policy and violates Mission, Commitments and Core Values in amended bylaws.</p> <p>31 The IRP panel standard of review would look at revised ICANN bylaws, including a Core Value requiring policies <u>"that are developed through a bottom-up, consensus-based multistakeholder process" and Core Value that states that ICANN will not engage in the "regulation" of "content."</u></p> <p>3032 <u>The CCWG expresses no opinion regarding the outcome of such an IRP, the validity of the assertions described above or the application of the revised ICANN bylaws to this RAA provision or to the hypothetical.</u></p> |
| <p>CONCLUSIONS:</p> <p>3433 Existing measures would not be adequate to challenge ICANN</p> | <p>3234 Proposed measures would be adequate to challenge ICANN enforcement <u>termination</u> decision.</p> |

| enforcement_termination decision.