

## REVIEW OF RECOMMENDATIONS 21 – 23 W/ EDITS

<p><b>21</b></p>	<p>Assess whether mechanisms to report and handle abuse complaints have led to more focused efforts to combat abuse by determining (1) the volume of reports of illegal conduct in connection with the use of the TLD that registries receive from governmental and quasi-governmental agencies;</p> <p>(2) the volume of inquires that registries receive from the public related to malicious conduct in the TLD;</p> <p><u>(3) whether more efforts are needed to publicize contact points to report complaints that involve abuse or illegal behavior within a TLD, and</u></p> <p>(4) what actions registries have taken to respond to complaints of illegal or malicious conduct in connection with the use of the TLD.</p> <p>Such efforts could include surveys, focus groups or community discussions. If, from the data collected these methods proved ineffective, consideration could be given to amending future standard Registry Agreements to <u>require Registries to more prominently disclose their abuse points of contact and provide more granular information to ICANN.</u> Once this information is gathered, future review teams should consider recommendations for appropriate follow-up measures.</p>	<p>ICANN organization and future CCT Review Teams</p>	<p>Medium</p>
<p><b>22</b></p>	<p><del>ICANN should advise registries to publicize abuse contact information via more channels and collect and record the reported outcomes by channel.</del></p>	<p>ICANN organization and future CCT Review Teams</p>	<p>Medium</p>

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### ***Public Comment Feedback:***

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#### **Comments Supporting Recommendation**

##### **Business Constituency – GNSO:**

ICANN Business Constituency ranks this recommendation as Very Important - Abuse Mitigation.

##### **GAC:**

The GAC strongly endorses the recommendation that improved data gathering is important in order to determine whether law enforcement and the public are aware of available complaint mechanisms, how often such mechanisms are used to notify registries of illegal or abuse behavior, and their effectiveness in mitigating DNS abuse. The GAC believes that registries should actively promote awareness of contact points for reporting of abuse.

##### **UK Government:**

Abuse, illegal conduct and misuse of personal information should be taken forward with particular reference to combatting the growing volume of child abuse content on new gTLDs as reported by the Internet Watch Foundation's Annual Report for 2016. This content is generally considered worldwide to be wholly unacceptable and is illegal in many countries. ICANN must ensure that registries act with urgency and due diligence to contribute to addressing this problem.

##### **IP Constituency – GNSO:**

Strongly support CCTRT recommendations aimed at enhancing safeguards, and would in fact go further in calling on ICANN and the stakeholder community to address these issues directly in the context of ongoing policy development processes.

There are shortcomings with the new gTLD safeguards. In order to protect the public interest and ensure consumer trust, we support improving: 1) uniformity and consistency of registry operator complaint response processes, and holding ICANN accountable for ensuring adequate compliance; 2) Scrutiny of Whois data verification, including identifying false and inaccurate data and ensuring contracted parties take appropriate action to suspend or cancel registrations whose data cannot be timely verified; 3) contractual commitments regarding registry fraud, deceptive conduct, and other malicious and abusive practices, and expanding upon contractual requirements. Also support implementing broader contractual requirements concerning registry operators' obligations to investigate and respond to allegations of illegal activity.

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We support comments submitted by the IPC and RySG to ICANN compliance dated March 28, 2017. These recommendations mirror a number of those in the CCT review regarding compliance, including the need for more granular data and feedback from ICANN's compliance team, aimed at assisting stakeholders to better address instances of abuse, and navigate the complaints process.

The first Public Interest Dispute Resolution Procedure (PICDRP) Standing Panel determination was issued since the Draft Report. The PICDRP involving the .FEEDBACK new gTLD epitomizes a number of serious concerns. Drastic changes are needed to ensure the Public Interest Commitments (PICs) are not meaningless and are used to protect the public interest. The Standing Panel did not address any of the numerous serious allegations raised in the complaint concerning registry fraudulent and deceptive practices. Panel was restricted by ICANN to evaluating the complaint based on a very narrow technical

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reading of the PICs. ICANN issued a corresponding breach notice that does not make specific reference to the PIC. ICANN has failed to provide any details regarding the apparent remediation plan submitted by the registry operator, or any of the steps apparently taken by the registry operator to allegedly cure the Registry Agreement breaches or address the PIC violations. FEEDBACK appears to be operating just as it was before. In addition, there were a number of transparency issues. ICANN failed to provide 1) information it may have been provided by the registry operator; 2) advance notice to complainants regarding the Panel; 3) details regarding the expected timing of the Panel's evaluation and decision. These transparency failures represent shortcomings in due process, and demonstrate ICANN's clear bias in favor of its contracted parties.

PICs are meaningless if contracted parties escape repercussions when turn a blind eye to abusive activities of registrants, or when engage in fraudulent and deceptive behavior. We recommend significant enhancements to the PICs and PICDRP, including clear requirements prohibiting the contracted parties (and affiliates) from engaging in fraud, deceptive practices, or other malicious or abusive conduct (as registrants or otherwise). The scope of the PICDRP must enable ICANN Compliance and the PICDRP Panelists to address registry fraud and deceptive practices

### Comments Not Supporting Recommendations

#### Non-Commercial Stakeholders Group – GNSO:

Here the term "abuse" appears to be used differently than in the prior recommendation. This "abuse" runs to content, speech and expression – "the volume of reports of illegal conduct in connection with the use of the TLD that registries receive from governmental and quasi-governmental agencies ... and from the public." Certainly, registries should be working with law enforcement within their jurisdiction, and law enforcement should be working, as appropriate across jurisdictions. But this recommendation puts ICANN squarely in the "content seat" as a monitor of content and speech. China seeking registries to take down pro-democracy websites as a violation of their criminal laws is not a complaint area for ICANN to enter. The same limits apply to complaints about websites involving hate speech laws which EU governments may want taken down and the US may expressly protect. ICANN is a technical policy organization; that

is its expertise and the limits thereof. This recommendation highlights a perfect place for national governments to be involved, and international cooperation to be fostered. But for ICANN, this is an "abuse" recommendation outside the scope of ICANN and must be deleted.

### Neutral Comments

#### ICANN Organisation:

This recommendation does not provide recommendation as to what is expected from ICANN organization and other stakeholders. For clarity, it would be helpful if the CCTRT can specify what is expected of ICANN organization and each of the stakeholders mentioned in these recommendations.

It is unclear what is meant by "effort to publicize." As per the current Registry Agreement, registries are only required to provide an abuse point of contact. Registries are not contractually obligated to publish the abuse point of contact in any specific area of their websites. Any additional requirements regarding the publication of the abuse point of contact would require a contract amendment. To implement this

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recommendation, it would be helpful if the CCTRT can clarify what data and analysis the CCTRT is asking for in this recommendation.

### Rationale/related Findings:

The Consumer Research and Registrant surveys executed by Nielsen have shown significant consumer concern for abuse<sup>1</sup> as tending to undermine confidence and trust in the DNS. The broad strategic response should be to ensure that there are sufficiently effective mechanisms to report complaints so that we are able to measure and assess them, and hence develop the capacity to manage and mitigate the causes of these complaints.

There is concern from the community that abuse data is not reported consistently to ICANN Registries. Other concerns focus on ICANN's own reporting of the complaints it receives focus as lacking granularity regarding the subject matter of the complaints and lacking information regarding the response to abuse complaints. Generally speaking detailed information regarding the subject matter of complaints and responses to those complaints is sparingly captured and shared, missing or unknown.

In light of these concerns, although the safeguards regarding making and handling complaints have been implemented, it is unclear: (1) whether either law enforcement or the public is sufficiently aware that these complaint mechanisms exist; (2) how frequently these channels are used by the public and law enforcement to notify registries of illegal or abusive behavior and (3) what impact these safeguards have had on their intended goal of mitigating DNS abuse. Hence our recommendations relate to improved data gathering to inform future efforts on combatting abuse within gTLDs.

### Measures of Success

- More information is gathered to assess whether current complaint reporting mechanisms are effective and inform policy efforts involving amendment of standard Registry agreements.
- ICANN Compliance routinely records and makes available information about complaints by categories filed from registry and registrars, including responses to reports of abuse to original reporters.

To: ICANN organization and future CCT Review Teams

Prerequisite or Priority Level: Medium

Consensus within Team: Yes

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### Safeguards for Sensitive and Regulated Strings

The GAC identified a non-exhaustive group of nearly 200 strings (Category 1) that raised consumer protection concerns, contained sensitive strings, or strings in regulated markets and advised that five safeguards should apply to these Category 1 strings. The GAC explained that strings linked to "regulated or professional sectors should operate in a way that is consistent with applicable laws" and observed

<sup>1</sup> The definition of abuse in the entire report is predicated on a single and commonly accepted definition of abuse; see SSAC's definition (insert cite).

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that the identified strings were “likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm<sup>2</sup>.” During implementation, however, ICANN included only a subset of these GAC-identified strings within the Category 1 safeguard protections<sup>3</sup>. In addition, during implementation, ICANN included only three of the five GAC-recommended safeguards to its selected subset of Category 1 strings in regulated markets<sup>4</sup>.

As implemented, these safeguards took the form of downstream contract requirements contained in the Public Interest Commitments Specification of the Registry Agreement. Specifically, the safeguards required registry operators to obligate registrars vis-à-vis the Registry-Registrar Agreement to include certain provisions in their Registration Agreements with registrants.

The requirements for sensitive strings and those in regulated markets included provisions requiring registrants to comply with all applicable laws<sup>5</sup>. Another provision emphasized that this obligation includes “those [laws] that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures<sup>6</sup>.” Furthermore, specific provisions detailed requirements for registrants handling sensitive information, such as health or financial data, to “implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law<sup>7</sup>.”

It is difficult to determine whether these safeguards have been the subject of complaints to ICANN contract compliance because the categories of complaints identified in ICANN’s Compliance Reports do not provide this level of detail. That is, the reported ICANN complaint categories for registries and registrars such as “PIC” (Public Interest Commitments) or “Abuse,” do not contain sufficiently specific information to correlate complaints with specific safeguards. ICANN Compliance does report that it proactively monitored compliance with Specification 11, paragraph 3a that includes the obligation for downstream contracts to include language requiring compliance with applicable laws, and determined that there was 99% compliance with this provision<sup>8</sup>.

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<sup>2</sup> ICANN GAC (11 April 2013), “Beijing Communiqué,” p. 8.

<sup>3</sup> Ibid. Compare the Beijing Communiqué with ICANN’s implementation framework for GAC Category 1 implementation advice: ICANN, “GAC Advice: Category 1 Safeguards,” accessed 7 February 2017, <https://newgtlds.icann.org/en/applicants/gac-advice/cat1-safeguards>; and ICANN New gTLD Program Committee (NGPC) (5 February 2014), GAC Category 1 Safeguards: Annex 2: ICANN NGPC Resolution No. 2014.02.05.NG01, accessed 7 February 2017, <https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf>; October 29, 2013 letter Crocker to GAC Chair; September 2, 2014 letter Crocker to GAC Chair; and June 23, 2015 Crocker to GAC Chair.

<sup>4</sup> Ibid. See also October 29, 2013 letter Crocker to GAC Chair; September 2, 2014 letter Crocker to GAC Chair.

<sup>5</sup> ICANN, “Registry Agreement,” Specification 11, 3(f).

<sup>6</sup> ICANN, “GAC Advice: Category 1 Safeguards” and ICANN NGPC, Category 1 Safeguards.

<sup>7</sup> Ibid.

<sup>8</sup> ICANN (2015), *ICANN Contractual Compliance 2014 Annual Report*, p.13.

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<b>23</b>	<p>Include more detailed information on the subject matter of complaints in ICANN publicly available compliance reports. Specifically, more precise data on the subject matter of complaints, particularly (1) <u>the class/type of abuse</u> (2) <u>the gTLD that is target of the abuse</u> (3) <u>the safeguard that is at risk</u> (4) <u>an indication of whether complaints relate to the protection of sensitive health or financial information</u> (5) what type of <u>contractual breach</u> is being complained of and (6) <u>resolution status of the complaints, including action details.</u> <u>These details</u> would assist future review teams in their assessment of these safeguards.</p>	ICANN organization	High
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### **Public Comment Feedback:**

#### **Comments Supporting Recommendation**

##### **Registries Stakeholder Constituency – GNSO:**

Recommendation 23 is supportable; could be refined to incorporate the help of contracted parties regarding an appropriate methodology, as ICANN's public complaint mechanisms are subject to overuse or abuse.

##### **Business Constituency – GNSO**

ICANN Business Constituency ranks this recommendation as Very Important - Data Collection and Analysis before next gTLD Expansion. Compliance is of utmost importance to the BC, per our mission to look after the interests of business registrants and users. ***We therefore agree with Recommendation 23 but would add a requirement to provide detail information about the compliance action and specify that all complaints be categorized by subject matter, actions and resolution. This information should be available to the public.***

##### **GAC:**

The GAC strongly supports these recommendations that more detailed information be collected by ICANN Contractual Compliance in order to determine the extent to which the safeguards for sensitive and regulated strings (Category 1) have been successful in mitigating risks to the public. The GAC also supports the aim of establishing a common set of definitions and metrics relating to sensitive information and appropriate security measures.

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### **UK Government:**

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### **International Trademark Association:**

*INTA agrees with Recommendation 23 but suggests it go farther than it does. The Draft Report repeatedly notes that one challenge to evaluating the impact of safeguards was the "lack of granular information about the subject matter of complaints" in publicly available ICANN Contractual Compliance data. INTA agrees with that point, as well as the Draft Report's Recommendation 23 that ICANN include in public records more detailed information and data on the subject matter of complaints. It is not clear why Recommendation 23 is limited to the protection of sensitive health or financial information. Greater transparency and granularity as to ICANN Contractual Compliance data would be essential to enable the Review Team to assess safeguards that are relevant to those risks. It would also be helpful to assess safeguards that are relevant to other risks. Contractual safeguards intended to mitigate the risks of and damage from trademark misuse are as relevant to consumer trust as those related to other forms of abuse - if only because trademark owners are among the consumers in the DNS. INTA recommends that the Review Team expand its recommendation and propose that ICANN Compliance disclose data and provide details on:*

- The type of abuse that is the subject of a complaint.*
- The particular contractual safeguard, if any, that is the subject of an abuse report.*
- The gTLD that is the subject of a complaint.*
- The duration of ICANN Compliance's investigation of a complaint.*
- The resolution of a complaint.*

*If the resolution of a complaint is that it is closed due to "insufficient evidence," ICANN Compliance should explain what standard was applied for sufficiency. These recommendations do not seek to require "micro-transparency" – for example, INTA is not asking for public disclosure of any of the parties to a complaint. Rather, INTA is interested in "macro-transparency" –to be able to assess ICANN's Compliance-related data at a high level to identify trends and evaluate the effectiveness of contractual safeguards. Recommendation 23 should be revised and enhanced, consistent with that objective.*

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### **Comments Not Supporting Recommendations**

#### **Non-Commercial Stakeholders Group – GNSO:**

*How can the Review Team phrase this question to drive complaints to ICANN that are within the limited scope and mission of ICANN?*

### **Neutral Comments**

#### **ICANN Organisation:**

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Recently, ICANN organization has received similar requests from other constituencies and working groups. ICANN organization is in the process of developing the required changes to provide more granularity on complaint types. The effort is focused on Whois inaccuracy, abuse and safeguard categories, and is expected to be completed in July 2017. The categories for abuse will relate to the Public Interest Commitment section 3.b and to the categories listed here:

<https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf>.

The recommendation also asks for data on what type of law is being violated when a complainant cites a law violation. ICANN has not received complaints related to a registry operator not complying with applicable laws. It would be helpful if the CCTRT could provide more guidance as to the purpose of the data requested and what analyses are expected of ICANN organization for this data.

### Rationale/related findings:

**Note:** A general recommendation for further transparency regarding the subject matter of complaints received by ICANN Contractual Compliance is set forth in [Chapter V. Data-Driven Analysis: Recommendations for Additional Data Collection and Analysis](#).

The lack of publicly available information about whether ICANN Contractual Compliance has received complaints related to the implemented Category 1 safeguards, and lack of a common framework to define sensitive information and identify what constitutes “reasonable and appropriate security measures” make it difficult to assess what impact this safeguard has had on mitigating risks to the public.

The Consumer Research and Registrant Survey by Nielsen survey results indicate that new gTLDs are not trusted to the same extent as legacy gTLDs and that the public is concerned about potential misuse of their personal information. Domains resolved to interests in highly regulated sectors such as health and finance are likely to collect more personal and sensitive information. So in that sense, trustworthiness of these domains is even more crucial. There is a further concern that complaints about illegal DNS activities may be under reported.

Although ICANN has mandated certain safeguards applicable to all new gTLD domains in general and domains for highly regulated strings in particular, there is scant evidentiary data that the contracted parties have implemented and are complying with these safeguards. We lack the evidence to definitively declare whether the defined and implemented safeguards have been effective in mitigating risks associated with domains in the overall new gTLD market and those in highly regulated markets in particular. Hence, it is important to understand whether the existing safeguards mitigate the risks assessed for the new gTLD domains, especially those associated with highly regulated domains and whether there is adequate and effective enforcement. The recommendation therefore proposes that ICANN Compliance collect and report the abuse reported to registry and registrars with a granularity that allows identification of origin, type, form and nature of abuse or alleged illegal use of the DNS reported

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The ICANN organisation acknowledges that data on the several safeguards is not currently being collected in either the detail expected or at all. However there are ongoing data collection activities and initiatives that may remedy this situation.

### Details:

These recommendations are causally related and together, seek to address whether the safeguards imposed on the new gTLD program, the mechanisms developed to implement them and the outcomes of those implementations allow a reviewer to draw a definitive conclusion on their effectiveness and fitness to purpose.

### Success Indicators:

ICANN Compliance release of a formatted report on abuse reports received and adjudicated with, at minimum, all of the specified labels included.

To: ICANN organization

Prerequisite or Priority Level: High

Consensus within Team: Yes

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There is a constant refrain from the community that abuse data is either not reported consistently to ICANN from all levels of the DNS business model, lacks granularity and the evidence of response to abuse from all levels and from ICANN compliance chain is sparingly captured, missing, unknown or shared. Anti-abuse organisations have captured, analyzed and published DNS Abuse data for a long time. Those reports have always been at odds with similar reports from the ICANN Compliance function and the organisation. The Consumer Research and Registrant surveys executed by Nielsen have shown significant consumer concern for abuse as tending to undermine confidence and trust in the DNS. The broad strategic response is to count it and, by virtue of counting, develop the capacity to manage it. Responses from some ICANN's own constituents details their lack of confidence in ICANN Compliance's oversight of the DNS abuse issue. They agree with the CCT RT that data must be collected and in greater detail so the community can be assured ICANN oversight is good and sufficient to objective.

The negative response of the NCUC reflects a discomfort with the dithering meaning of abuse within the framework of bye-law, the CCT RT's mandate and usage in the report. Recommend the meaning of abuse be aligned to ICANN's mission and bye-law mandated responsibilities by adopting the SSAC's definition of abuse.

The ICANN Organisation is hesitant on clarity of what is requested of either itself or the other organisations, registries included.

The definition of abuse in the entire report is predicated on a single and commonly accepted definition of abuse; see SSAC's definition. The existing mechanism to 'report and handle abuse complaints' include abuse contact at registry and registrar level, obligations of both registry and registrar to respond to and document their responses to abuse complaints and for ICANN Compliance to verify these responses. Registries are being requested to collect, curate, analyze abuse data of several categories from registrars as obliged by Specification 11 of the Base Registry Agreement and report the same to ICANN Compliance. The evidence does not suggest new agreements are required for these actions.

On the balance of the evidence current contractual obligations between ICANN and Registries obliges registries to record and publish abuse contacts on websites. Asking registries to publish abuse contacts in every channel they use to publicize the registry's business is neither extraordinary nor an extension to contract. Any competent and fit-to-purpose Registry-Registrar Agreement would impose and/or reflect the relevant covenant between ICANN and the Registry and impose subsidiary obligations on its primary business partners - the registrars - to collect abuse complaints and report mitigating actions. Obligations imposed by current registry agreements already render that data to be collected by the registries for statistical analysis and their own mitigating actions.

### Success Indicators:

Registries and registrars offer more than a website or telephone number for reporting abuse. Other channels could include social media. They capture the channel information from which the abuse complaint is coursed to them.