Final Issue Report on

Uniformity of Reporting

STATUS OF THIS DOCUMENT

This Final Issue Report investigates the issues and status of reporting mechanisms for initiating, tracking and analyzing policy-violation reports. This report will be submitted to the GNSO Council for its consideration.

SUMMARY

This Final Issue Report is published in response to a request from the GNSO Council pursuant to a resolution adopted on 17 October 2012 (see – Motion 1 at http://gnso.icann.org/en/resolutions#20121017-1).

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1.   Executive Summary

1.1   Objective

- This Final Issue Report is published in response to a request by the GNSO Council for an Issue Report on the current state of uniformity in the mechanisms to initiate, track, and analyze policy-violation reports.

1.2   Background

- The request for an Issue Report on this topic follows the work of the Registration Abuse Policies Working Group (RAPWG) requesting improved reporting capabilities across the ICANN Community to better inform policy development.
- The GNSO Council ultimately deliberated the issue at its Toronto Council meeting and adopted a motion requesting an Issue Report on this topic, explicitly requesting that the Issue Report includes a Staff recommendation on how this issue can be further addressed outside of a PDP if recommendations in relation to this issue do not require consensus policies to implement.

1.3   Assessment of Reporting for Compliance and Policy Development

- The ICANN Contractual Compliance team has created and is executing a three-year plan to enhance the compliance systems, process and reporting capabilities.
- A Contractual Compliance metrics and reporting solution has been constructed that satisfies many of the initial requirements identified from the RAPWG recommendation.
- An ICANN Contractual Compliance Audit program has been initiated that may further provide valuable data to help inform the policy development process.
- Metrics requirements for use in policy development are minimally identified in current PDP and WG documentation.

1.4   Scope and Staff Recommendations

- Staff has confirmed that while this issue falls within the scope of the GNSO's Policy Development Process, Staff does not recommend that the GNSO Council initiate a PDP on this topic as the issue may be more effectively addressed through other means and the outcome is not expected to result in "consensus policies". Furthermore, an alternative approach to this issue is expected to be less time-consuming and rigid than a PDP.

- With regard to the Compliance reporting, ICANN Staff recommends that the GNSO Council await further action to allow the ICANN Contractual Compliance team to implement the remainder of its three-year plan; where the present solution migrates from prototype to production and performance dashboards are made available to the community.

- ICANN Staff recommends the GNSO Council consider forming a Working Group to review how the community can collaborate with contracted parties and other service providers in the sharing of complaint and abuse data that may also further educate Registrants and Internet users in submission of complaints to the appropriate party. Such a Working Group could also investigate more formal processes for requests of data, metrics and other reporting needs from the GNSO that may aid in GNSO policy development efforts.

2.   Objective

The objective of this Report is to inform the GNSO Council of the current state of the issues and status of reporting mechanisms for initiating, tracking and analyzing policy-violation reports. Preparation of an Issue Report is a required first step under the ICANN Bylaws before a PDP or actions can be initiated.

A Preliminary Issue Report on the current state of uniformity of reporting was published for public comment to allow for the ICANN community to provide feedback on the analysis and recommendations contained therein. No comments were received.

3.   Background on Uniformity of Reporting

3. 1   Background on the process

The request for an Issue Report on this topic follows the work of the Registration Abuse Policies Working Group (RAPWG). The RAPWG was tasked by the GNSO Council with defining abuse, making a determination between registration abuse versus use abuse, defining the most common forms of abuse, and understanding the effectiveness of abuse mitigation provisions within agreements in order to identify and recommend specific policy issues and processes for further consideration by the GNSO Council. The RAPWG produced the RAPWG Final Report in May 2010 (see http://gnso.icann.org/issues/rap/rap-wg-final-report-29may10-en.pdf).

The 2009 RAPWG identified several recommendations in its Final Report, one being the 'need for more uniformity in the mechanisms to initiate, track, and analyze policy-violation reports' and as a result recommended that 'the GNSO and the larger ICANN community in general, create and support uniform reporting processes'. Shortly after, the GNSO Council began deliberations on the RAPWG recommendations.

At its 6 October 2011 meeting, The GNSO Council approved a resolution for the ICANN Contractual Compliance Department to report on existing systems that:

- •   report and track violations and/or complaints;
- •   detail improvements / changes made since the RAPWG Report or foreseen in the near future
- •   identify gaps and any improvements that might be desirable but not foreseen at this stage;

During the March 2012, ICANN 43 Costa Rica meeting, the ICANN Contractual Compliance department presented to the GNSO Council its findings about the current and future state of process, metrics, and the contractual compliance systems (see http://gnso.icann.org/issues/rap/contractual-compliance-report-reporting-uniformity-16mar12-en.pdf). The presentation identified limitations with existing systems, improperly designed

complaint categorization, and the inability to derive meaningful and actionable metrics from the systems and the customer service data within. Also included in the presentation was an outline of a roadmap for the Contractual Compliance department's tracking of policy violations, changes to existing systems, and deployment of a new complaint submission interface in addition to the processes required to support the compliance function. The roadmap is divided across assessment, transformation, and future phases. More information about the three year plan can be found in the next section of this report.

Subsequently, the GNSO Council discussed the RAPWG recommendation in light of the feedback received from the ICANN Contractual Compliance Department. A member of the RAPWG alumni group volunteered to provide additional information on how the RAPWG recommendation could be implemented. After collaboration and adoption by the "alumni group"[1], a supplemental report was presented to the GNSO Council in September of 2012 (see http://gnso.icann.org/en/issues/rap/comments-rap-uniformity-of-reporting-30jul12-en.pdf). Based on final Council deliberations in October of 2012, the GNSO Council accepted the findings contained in that supplemental report and requested ICANN Staff to create, "an Issue Report on the current state of uniformity in the mechanisms to initiate, track, and analyze policy-violation reports…. ICANN Staff is also explicitly requested to provide its recommendation(s) on how this issue can be further addressed outside of a PDP if recommendations in relation to this issue do not require consensus policies to implement" (see – Motion 1 at http://gnso.icann.org/en/resolutions#20121017-1).

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[1] A number of former RAPWG members collaborated on the development of the supplemental report.

4.   Assessment of Reporting for Compliance and Policy Development

At the conclusion of the Registration Abuse Policies WG (RAPWG) in 2010, the state of contractual compliance reporting and access to complaint data, both within ICANN and external sources, was less than optimal and thus challenged the ability to have informed decision making around policy development where Registrants experienced certain abuses or issues with registration and management of their domains[2]. Three years after the RAPWG's recommendation on uniformity of reporting, the ICANN Contractual Compliance team has improved the compliance function through a defined process approach, categorization of complaints, and establishment of a systems and metrics framework.

This section provides an overview of current activities within ICANN that are expected to address the reporting needs of the GNSO and the policy development process.

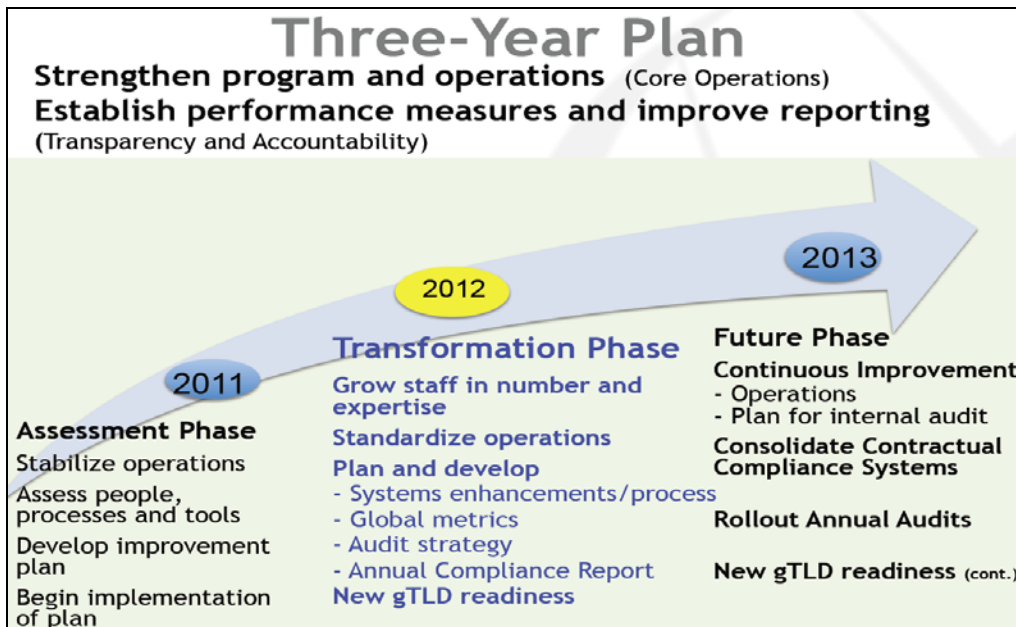## 4.1   Compliance Strategy and Roadmap

Chart: 4.1

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[2] It is not the prime objective for the Contractual Compliance Department to collect data for policy development purposes as their main objective is to collect this information to support the management of the compliance function. However, the data does remain to be a useful tool for assisting the policy development process and continuous improvement.

The ICANN Contractual Compliance team is entering its last year of the three-year plan depicted in Chart 4.1. Activities within the Assessment and Transformation phases were completed within plan and produced results that provide a foundation for evolving the Contractual Compliance function towards a higher standard. The Future phase is well underway in 2013. A presentation on the planned activities was provided at the ICANN 45 Toronto meeting (see http://toronto45.icann.org/node/34363).

A core foundation in the transformation of the Contractual Compliance function was the establishment of the "1,2,3 Model" (see chart below) to promote monitoring and prevention methods for possible contractual violations. A key component of the 1,2,3 Model is the escalation path from initiation through resolution. Each transaction traversing the process begins with an input such as a complaint or a notification from an ICANN compliance monitoring system with the transaction concluding with either informal or formal resolution. Informal resolution is achieved with the satisfaction of one or more conditions prior to a breach. After submission of a breach notice, good standing is lost within the Formal Resolution process. Resolution can also be achieved by meeting certain conditions based on the type of breach, else the formal enforcement action is taken (such as suspension/termination).
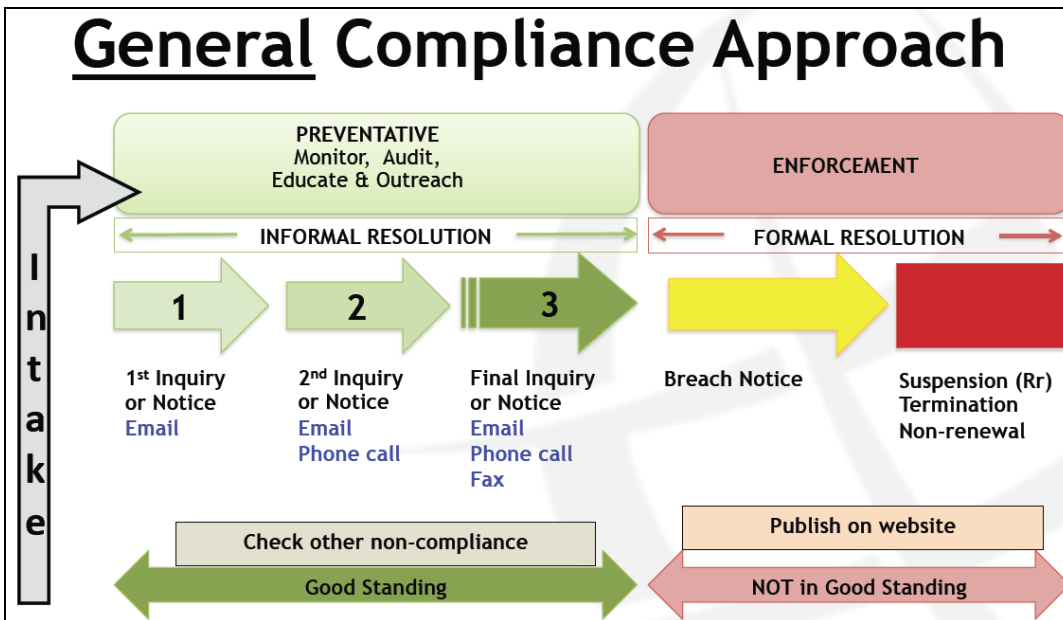

Chart: 4.2

The contractual compliance approach discussed here is only a summary of the overall program and its details are not within the scope of this Issue Report. However, it was important to touch upon this strategy because it influences the improvements being made to ICANN complaint intake systems, and it also sets the stage for improved metrics reporting satisfying much of the RAPWG recommendation. Details about the ICANN Contractual Compliance strategy can be found on the ICANN Contractual Compliance site (http://www.icann.org/en/resources/compliance).

4.2   Compliance Complaint Systems and Metrics

As presented in October 2012 at the ICANN 45 Toronto meeting (see http://toronto45.icann.org/node/34363), changes to the back-end compliance systems were performed and the development of a metrics model prototype had begun.
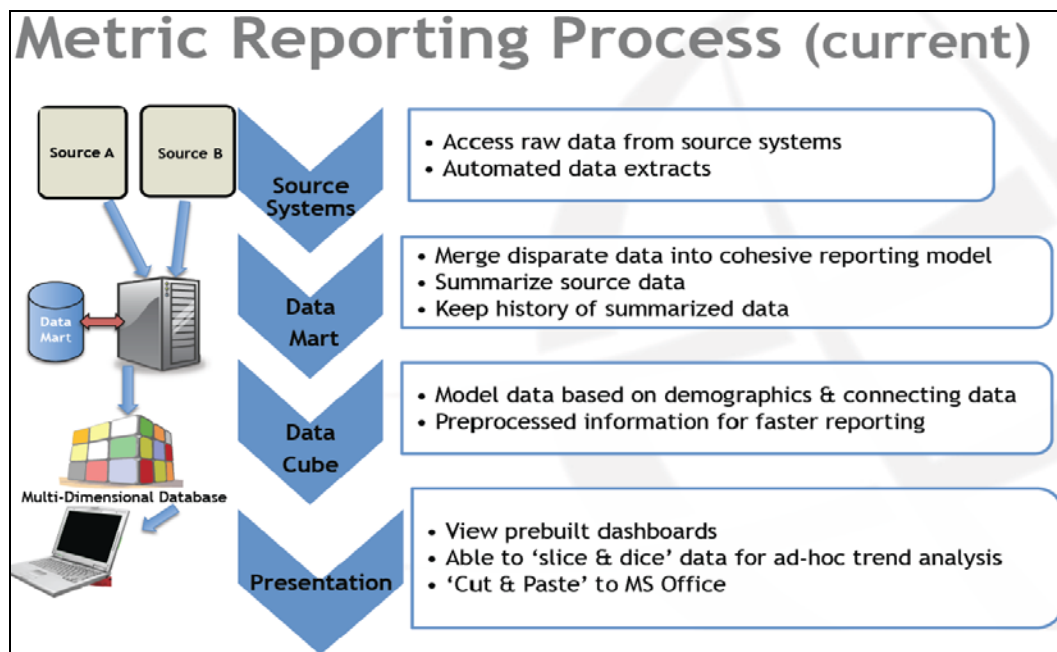

Chart: 4.3

To improve reporting capabilities of the contractual compliance function, several key requirements were introduced which closely align with much of the RAPWG uniformity of reporting recommendation:

1. Complaint types were properly categorized and defined across the multiple intake systems per the "1,2,3 Model"

2. Complaint types are aligned to provisions of the Registrar Accreditation Agreement (RAA), where possible, that aid in defining the scope of measurement for the compliance function

3. A data mart was developed allowing for assignment of meta-tag information enabling multi-dimensional views of data

4. 77 metrics have been defined and collected across 21 dimensions (table 4.1 below is only a representative sample)

5. Dashboard presentation capability was created for viewing metrics in meaningful and actionable ways such as time based trends as compared to service levels, or by region, and many other cross-sectional views.

Metrics			Dimensions	
Complaint Count	Complaints per domain	DNS Avail	Calendar Date	Complainant
DNS Name server Performance	DNS Performance	DNS Planned outage	Complaint TLD	Complaint Type
DNS Svc Up	Domain Count	Registrar Count	Data Source	Enforcement Cured
Registrars with complaints	Registry Count	Turn Around Time 1st, 2nd, 3rd Notice	Enforcement Notices	ICANN Region List
TLD Count	Volume 1st, 2nd, 3rd Notice	WHOIS Avail	Registrar Contract Year	Registrar List
WHOIS Performance	WHOIS Planned outage Notice	WHOIS Response Time	Registry List	Staff
WHOIS Svc Up			TLD	TLD Round

Table: 4.1

The presentation layer of the enhanced metrics framework (shown on Chart 4.3 on the previous page) has yet to be deployed to production, because the prototype has not completed development. However, ICANN Staff is working to finalize system requirements and define the proper hosting platform for making the metrics dashboards available to the community. Such considerations include integration with other enterprise-wide reporting initiatives and integration into myICANN.org. It is anticipated that access to reporting dashboards will occur in phases in the second half of 2013. In the interim, the community can expect to see some publication of data through various documents developed for community consumption via manual export to knowledge documents (Issue Reports and other policy documents) or website materials (Contractual Compliance site).

The following graphics are screen shots of the prototype dashboard. More detailed views of these diagrams can be found in the ICANN 45 Toronto presentation (see
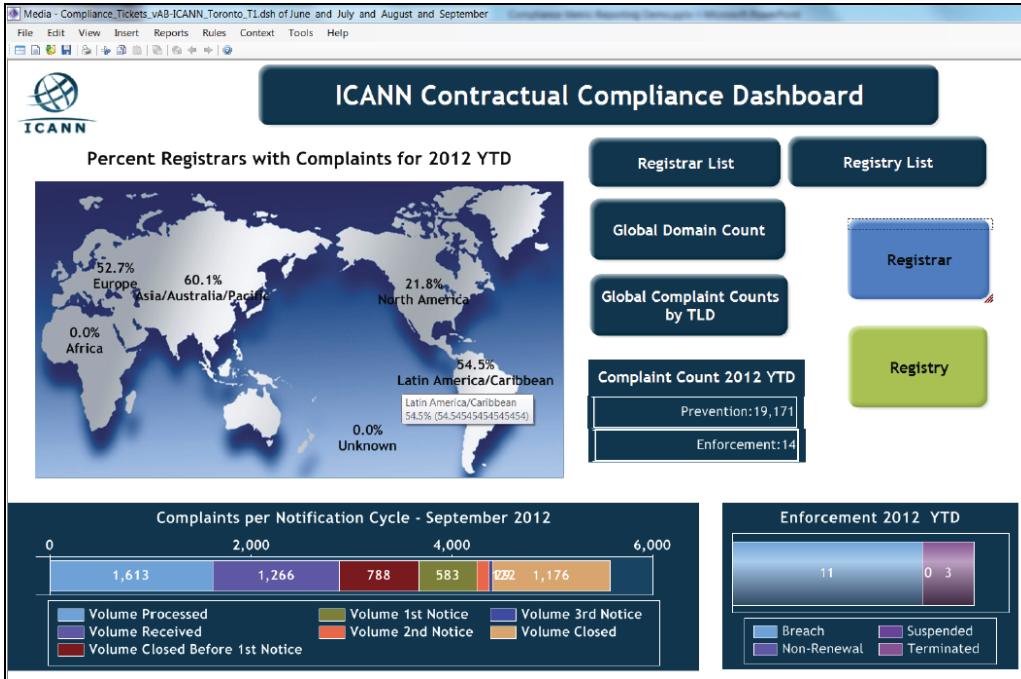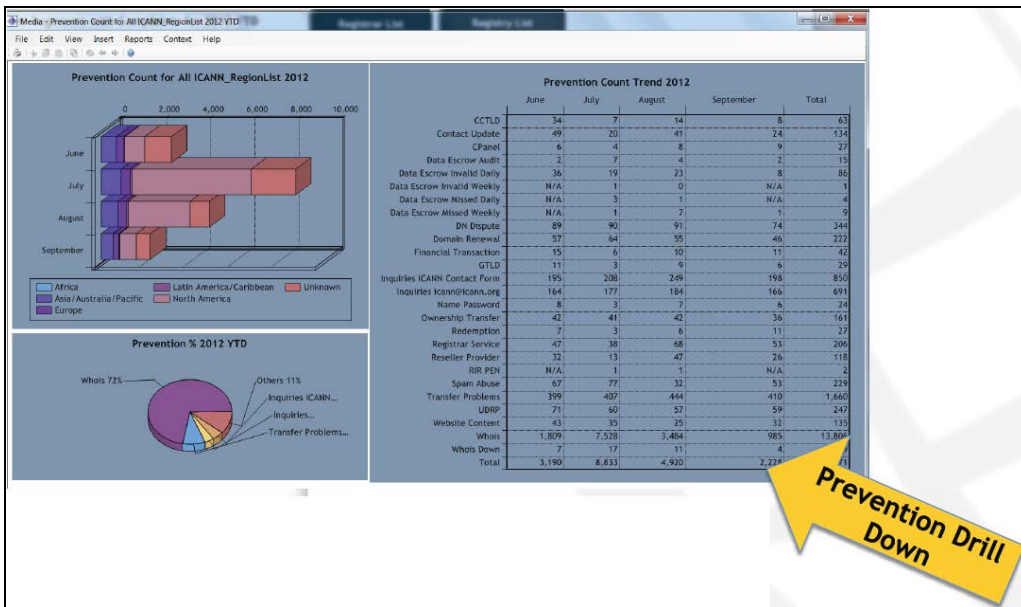
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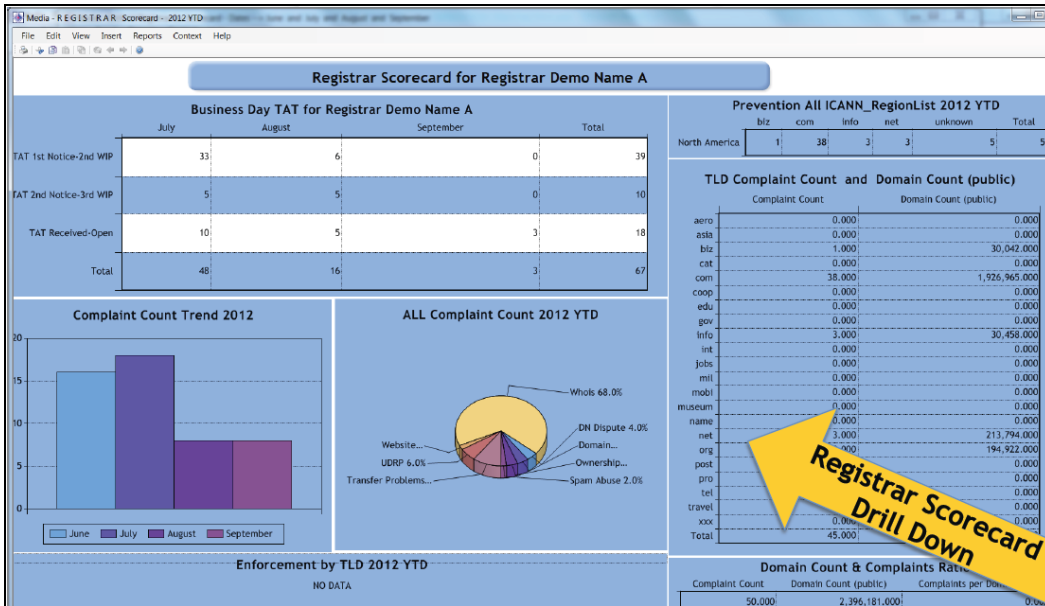

Chart: 4.5

Chart: 4.6

Chart: 4.7

4.3   Complaint Intake – Internet User Facing

Complaints submitted to ICANN by Registrants and Internet users are only a fraction of what is submitted directly to the customer-facing service providers, as customers are presumed to first

approach the entity with which they have a direct relationship such as their registrar. ICANN's primary customer-facing online interface for fielding complaints is http://internic.net. This front-end platform has been used by ICANN for many years and has often been a subject of complaints itself in that it lacks usability for classifying and addressing complaints.
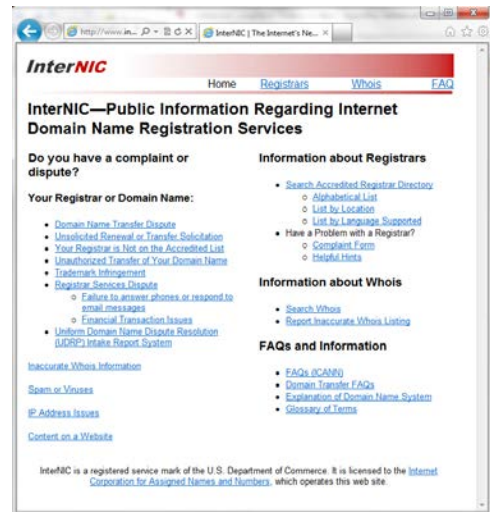
As part of the Contractual Compliance Team's three year plan, the intake for complaints submitted to ICANN by Registrants and Internet users will be migrated to the ICANN Contractual Compliance section of the icann.org website (see http://www.icann.org/en/resources/compliance/complaints). The migration began in Q1 of 2013 with an anticipated completion around mid-2013. The migration is an iterative process starting with WHOIS-related complaints. As each complaint type is migrated,

the Internic complaint page will be updated in a way that forwards Internet users to the new front-end intake system on icann.org. Not only will the Internet user experience a different and improved interface for submitting complaints, but the new intake system will also provide Internet users with enhanced self-help information and FAQs relating to the complaint type they wish to submit. Connecting self-help to complaint submission is often an effective method to mitigate simplistic issues and minimize the need for opening a complaint. Upon validation of success for WHOIS complaint migration, the next most difficult complaint type will be migrated until all in-scope ICANN complaint types are complete. After which, the Internic site will continue to exist supporting its original mandate with the IETF and it will continue to refer Internet users the availability of the complaint system on icann.org. It should be noted that this phase of the migration does not change the content of the complaint, but improvements on data collection and meta-tagging of complaints will be implemented to improve the reporting function.

4.4   ICANN Compliance Audit Program

ICANN Contractual Compliance Department launched a new Audit Program (see http://www.icann.org/en/resources/compliance/audits) as part of its three-year plan. This new initiative is not considered within scope of this report, but an overview is provided for information purposes. The results of this program may supplement data gathered to help inform GNSO policy development activities.
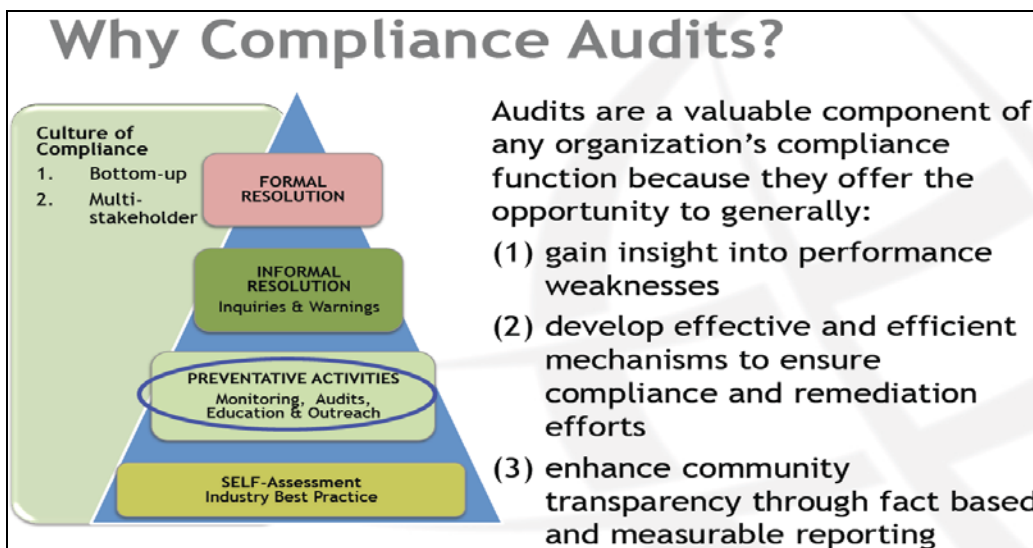

Chart: 4.8

The goal of the Registry and Registrar audit program is to allow ICANN to first identify and inform, and then properly manage and help remediate any deficiencies as compared against criteria within agreements. This process will ensure alignment and compliance by all contracted parties with their contractual obligations. Audit program scope entails:

- Registrar and registry agreements, including the incorporated ICANN consensus policies
- All ICANN-accredited registrars (2001 and 2009 RAAs)
- Existing TLD registries
- New agreements entered into with a contracted party may be included
- New gTLD registries (after delegation)

The audit program will run on a three-year cycle. Each registry and registrar agreement will be randomly selected for audit over a three-year period:

- Year one – one third (1/3) of the Registry and Registrar agreements from a complete list will be randomly selected and audited.
- Year two – another one third (1/3) will be randomly selected and audited.
- Year three – the remaining one third of all agreements (1/3) will be audited.

The audit program is being delivered via a phased approach:

- Planning Phase (Define Scope, Purpose, Schedule, Reports)
- Organizing Phase (Establish Roles/Responsibilities, Resources, Develop Metrics, Goals)
- Pre-Audit Notification Phase (Prepare and Send notification)
- Audit Phase
    - Collect data in secure environment
    - Sort collate and store information against appropriate provisions
    - If issues arise, immediately request validation or cure of deficiencies prior to audit close date
    - If issues remain, the issues identified will be reported in the Deficiencies Report and published online
- Reporting Phase:
    - Validate results to be reported

- o   Publish reports on icann.org

- o   Some types of reports (List of audited registrars and registries, Deficiencies Report listing registrar/registry, provision, etc., Audit response statistics for ex. turnaround time, lack of response %, non-compliance, etc.)

- Remediation Phase:

  - o   Manage and support deficiency efforts

  - o   Track and report on deficiencies

  - o   Potential follow-up audits for completed remediation

The following chart depicts the Registry and Registrar provisions considered in scope of the audit:

Provisions within Registrar Accreditation Agreement
2.2 Registrar's use of ICANN's trademark. (optional for a Registrar to use the logo)
3.10 Insurance
3.12 Reseller agreement (mandatory provisions)
3.13 Registrar training
3.16 Registrar contact details on registrar's website
5.11 Update contact information in RADAR
3.12.5 and 3.15 Registrant rights and responsibilities
3.3.1 to 3.3.5 WHOIS- Interactive Webpage, Corresponding Data Elements
3.4.2 Retention of Registration Data
3.7.4 Reasonable assurance of payment
3.7.5.2 Domain name renewal w/out consent from registrant
3.7.5.3 to 3.7.5.6 EDDP-Domain name renewal, provision of applicable information to Registrants
3.7.7 Registration agreement w/ registrants (mandatory provisions)
3.7.8 WHOIS data verifications
5.3.3 Provide ICANN with list of directors and officers
Provisions within Registry Agreements
3.1.a.i Implement temporary policies or specs to preserve security and stability
3.1.b Implement consensus policies
3.1.c.i Data escrow
3.1.c.ii Personal data
3.1.c.iii Bulk zone file access
3.1.c.iv Monthly Reporting
3.1.c.v WHOIS
3.1.d.i Reserved TLD strings

Table: 4.2

4.5   Complaint Metrics External to ICANN

While complaint and audit data is now being made available from ICANN Contractual Compliance another gap in metrics remains. It is understood that only a small portion of complaints actually end up at ICANN as the first point of contact is usually the registrar or registry involved. However, requirements of data gathering from external sources, such as complaint data from Contracted Parties, are not always available which may otherwise assist in the policy development process. Previous PDP Working Groups and Drafting Team efforts like the RAPWG, IRTP-B, PEDNR, and Vertical Integration are examples of such efforts that were challenged by this issue. They experienced this gap because certain types of data were not measured or not made available for a variety of reasons. Such root causes are:

- Certain types of data are not measured at all or unknown
- Access to data and reports from third parties are confidential and the WG does not have a clear definition how such data could be used without compromising the integrity of confidence
- Cost considerations of access to metrics without immediate or near term funding
- Legal considerations dealing with competition law
- Privacy considerations
- No formal process exists to request data other than noted in next Section 4.6
- Collaboration and interaction with external stakeholders who collect data is limited

4.6   ICANN Policy Development Process and Working Groups

While Contractual Compliance metrics are critical to measure complaints submitted to ICANN and audit performance of existing policies, it is equally important to use metrics for developing GNSO policy, as well as, defining possible metrics to assess the impact of adopted policy changes. The ICANN Policy Development Process (PDP) includes language relative to assessments and metrics that should be considered by a Working Group for policy development. The PDP process also denotes post assessments where new policies are implemented. The following two sections were extracted from the PDP process within the GNSO Operating Rules and Procedures (see http://gnso.icann.org/basics/gnso-pdp-manual-annex-2-16dec11-en.pdf).

Section 9: PDP Outcomes and Processes

The PDP Team is encouraged to establish communication in the early stages of the PDP with other departments, outside the policy department, within ICANN that may have an interest, expertise, or information regarding the implementability of the issue. The Staff Manager is responsible for serving as the intermediary between the PDP Team and the various ICANN departments (finance, legal, compliance, etc.).

Section 17: Periodic Assessments of Approved Policies

Periodic assessment of PDP recommendations and policies is an important tool to guard against unexpected results or inefficient processes arising from GNSO policies. PDP Teams are encouraged to include proposed timing, assessment tools, and metrics for review as part of their Final Report. In addition, the GNSO Council may at any time initiate reviews of past policy recommendations.

To better manage workload and initiation of a PDP by the GNSO Council, a template, "Request for Issue Report" will be required to initiate any new effort where an Issue Report is requested. One section of the form includes the following relative to data gathering for informed policy:

Please provide a concise definition of the issue presented and the problems raised by the issue, including quantification to the extent feasible:

   o *What is the economic impact or effect on competition, consumer trust, privacy and other rights*

The three excerpts above begin to set the foundation to acquire metrics for use within a PDP and to measure its effectiveness. However, the Working Group Charter template does not include a section for proposing metrics that may be useful to a group conducting its analysis, nor does it include possible success factors and possible metrics to measure compliance with any policy changes or additions. Further, no formal process exists to exercise a formal request for metrics from both internal to ICANN and external resources. Often these types of requirements will contain time and cost restraints. Defining a formal process may aid in expediting these types of requests as request from future Working Group and PDP efforts.

5.   Scope Considerations for A PDP on Uniformity of Reporting

Annex A, Section 4 of the ICANN Bylaws provides that the following six (6) elements should be considered in an Issue Report:

a) The proposed issue raised for consideration;

b) The identity of the party submitting the request for the Issue Report;

c) How that party is affected by the issue, if known;

d) Support for the issue to initiate the PDP, if known;

e) The opinion of the ICANN General Counsel regarding whether the issue proposed for consideration within the Policy Development Process is properly within the scope of the ICANN's mission, policy process and more specifically the role of the GNSO as set forth in the Bylaws.

f) The opinion of ICANN Staff as to whether the Council should initiate the PDP on the issue

5.1 Determining Scope

Initiation of a GNSO Policy Development Process requires that the issue at hand be within the scope of the ICANN Policy Process. Appendix A of the ICANN Bylaws requires the General Counsel's Office to certify that the issue is "within scope". In this case, it has been determined that a PDP on uniformity in the mechanisms to initiate, track, and analyze policy-violation reports could be within scope, as long as it related to gTLD related matters. However, as explained below, ICANN Staff is of the opinion that this issue can be more effectively addressed outside a PDP, especially since it is not expected to result in "consensus policy" (which would require a PDP).

Scope Considerations

Under the Bylaws, the GNSO is responsible for developing and recommending to the Board substantive policies relating to gTLDs. This mandate is by nature broader than what may constitute "consensus policies." The GNSO may initiate a Policy Development Process (PDP) on a topic that is within the GNSO Council's mandate, even if it might not ultimately result in a new "consensus

policy" that is "within the picket fence." For example, the GNSO can conduct a PDP on topics related to gTLDs that may result in other types of recommendations, such as advice to the ICANN Board, creation of best practices, or other non-binding policies. At the same time, if it is clear from the outset that the issue is not expected to result in new "consensus policy", the Council may also opt to use an alternative approach than a PDP to address the issue.

A topic is generally considered to be "within the picket fence" if it falls into subjects recognized under the RAA or the applicable registry agreements[3] that, if recommended by the GNSO Council (with the appropriate voting thresholds) and approved by the ICANN Board, could become "consensus policies" binding upon all registrars and registries. For example the RAA describes a series of topics where consensus policies could be developed in section 4.2 and in other sections of the RAA. The Registry Agreements also have comparable sections.

A GNSO PDP may result in advice to the ICANN Board, recommendations for best practices, in addition to developing "Consensus Policies" that are enforceable against the contracted parties in accordance with their agreements. As a result, while it is not recommended at this stage, a GNSO PDP could be commenced on this topic in a manner similar to prior efforts like Inter-Registrar Transfer Policy.   In determining whether the issue is within the scope of the ICANN policy process and the scope of the GNSO, Staff and the General Counsel's office have considered the following factors:

5.2 Whether the issue is within the scope of ICANN's mission statement
The issue is considered within scope of ICANN's mission statement. The ICANN Bylaws state that:
"The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, ICANN:

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[3] See, for example, RAA Section 4.2- Topics for New and Revised Specifications and Policies, posted at: http://www.icann.org/en/registrars/agreements.html.

1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are

a. domain names (forming a system referred to as "DNS");

b. Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and,

c. protocol port and parameter numbers.

2. Coordinates the operation and evolution of the DNS root name server system.

3. Coordinates policy development reasonably and appropriately related to these technical functions."

The GNSO Council's resolution requesting this Issue Report does seek for opportunities to address the identified reporting issues outside of the PDP process. The consideration of these options most likely will not have a direct impact on the security and stability of the Internet, but it may lead to more informed policy development that could potentially influence security and stability.

5.3 Whether the issue is broadly applicable to multiple situations or organizations.

The ICANN reporting and metrics framework is broadly applicable to multiple situations or organizations, including each existing gTLDs under contract with ICANN, each of 1000+ accredited registrars and many existing and potential registrants.   Further, the formation of a group to review improvements for data gathering of metrics external to ICANN may be applicable to future policy development efforts by stakeholders.

5.4 Whether the issue is likely to have lasting value or applicability, albeit with the need for occasional updates.

Metrics depicting policy performance in meaningful and actionable ways facilitate a continuous improvement cycle that will invoke occasional updates.

5.5 Whether the issue will likely enable ICANN to carry out its commitments under the Affirmation of Commitments.

In addition to any possible actions by the GNSO Council as a result of addressing this issue, enhancement to metrics and reporting of the ICANN Contractual Compliance function will further

enable ICANN to meet its obligations under the Affirmation of Commitments. The follow extracts are applicable to this effort:

- Paragraph 3 includes commitments to "…decisions made are in the public interest and accountable and transparent;" A sharing or collaboration around measurements of success or failure in policy implementation and creation will inform the community about the impacts of policy on the management of the DNS.

- Paragraph 7 shows that ICANN will commit to "…fact-based policy decisions, …" This commitment will better inform the creation of new policies and determine the levels of success as part of continuous improvement.

- Paragraph 9.3 discuss expansion of the DNS and various issues involved as well as the review required to measure the success of the new gTLD program via consumer trust, consumer choice and competition. While the nexus of the recommendations around this Issue Report do not directly involve the new gTLD program, future reporting requirements of new policies around the gTLD program will be important and may provide guidance for further policy development.

5.6 Whether the issue will establish a guide or framework for future decision-making.

Results of metrics used in determining the need for changes to existing or the development of new policies or to simply measure the success or failure of existing policy could influence future decision-making with respect to policy implementation and management.

5.7 Whether the issue implicates or affects an existing ICANN policy.

The topic does not affect contract conditions that were either adopted through formal consensus policies, or are otherwise reflected in the current Registry Agreements and the RAA.

6. Staff Recommendations

Well after the RAPWG created its initial recommendation on uniformity of reporting, it is evident that the implementation of the ICANN Contractual Compliance three-year plan has improved the compliance function through process, systems, and reporting capabilities. Given these advancements, ICANN Policy Staff is of the view that what has been accomplished to date, and the continued execution of planned activities satisfies many of the GNSO requirements on reporting as reconciled with the RAPWG recommendation and subsequent documentation. Therefore, Staff does not recommend a PDP for this issue at this stage. However, there are a number of other activities related to this topic that could be tackled outside of a PDP that could contribute to the objective of "uniformity of reporting" as originally outlined by the RAPWG.

6.1 Compliance Systems and Reporting

As detailed in sections 4.2 and 4.3, the back-end systems improvements, classification of complaints aligned with the "1,2,3 Model", construction of a data mart, and a dashboard prototype all contribute to a much more robust reporting capability. While Contractual Compliance initiatives are not complete, the planned activities do satisfy many of the benefits identified by the RAPWG and its alumni group, such as:

- Reduce errors and wasted time for all parties by providing "just in time" education and knowledge to people wanting to report problems
- Improve quality by making it easier to submit a valid complaint
- Improving the effectiveness of policy-compliance activities
- Improving the data available for GNSO (working-group) and ICANN (advisory-group) policy-making
- Improving the data available for compliance activities

ICANN Staff recommends the GNSO community await the deployment of the public facing Contractual Compliance dashboard(s) and the completed migration of the complaint front-end to icann.org before considering further action. Staff also recommends that the Contractual Compliance team is requested to provide a status update on the three year plan and reporting

systems transformation to the GNSO Council at the ICANN 48 meeting in November 2013. In the meantime, the ICANN Policy team will liaise with the Contractual Compliance team for any reporting needs for policy development (see recommendation 6.3).

6.2 Collaboration with Contracted Parties and Other Data Providers

While the ICANN Contractual Compliance Team has made great advances in the process and reporting of Contractual Compliance activities, one gap remains. Only a small percentage of complaints relating to domain registration management are submitted to ICANN. The remaining complaints are submitted directly to service providers, such as Registrars, with ICANN and the GNSO community having limited or no visibility to this activity[4]. Yet, this type of information may better inform future policy development processes. The question becomes, how can customer complaint data external to ICANN, be shared in a constructive manner that does not jeopardize fair competition or reveal competitive advantages?

A possible way to explore this issue further would be for the GNSO Council to consider forming a Working Group to review this issue and understand how the community can collaborate with contracted parties in sharing of data related to complaints and to further educate Registrants and Internet users in submission of complaints to the appropriate party. This collaboration recommendation is not meant to have policy implications but more an informal discussion in how the community can address these limitations and develop methods for continuous improvement.

In addition to complaint data external to ICANN, other service providers produce data on varying forms of abuse. Should a Working Group be formed, exploration of other relative data sources should be reviewed. For example, collaboration with entities that track spam, phishing, botnet, and cybersquatting may enhance policy efforts within the GNSO.

Other goals identified by the RAPWG Alumni Group that could be reviewed by the DT are:
- Provide "just in time" education and knowledge to people wanting to report problems
- Make it easier to submit a valid complaint

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[4] Not all complaints submitted to ICANN or Service Providers are about adherence to policy

- Reduce the number of erroneous complaints

- Improve understanding of the limits of ICANN policies and other options to pursue if the issue is not covered by policy

- Improve the data available for GNSO Working Group policy-making activities and answer the question "which comes first, policy-process or definitive data describing the problem?" along with suggestions as to how data can be gathered when it hasn't yet been included in the reporting process.

6.3 Collaboration with ICANN's Contractual Compliance Department, other ICANN Teams, and Stakeholders

Collaboration between ICANN and the GNSO community is an essential aspect to the multi-stakeholder, bottom-up process for policy development. As the Internet continues to grow and the imminent expansion of the DNS, enhanced and frequent collaboration will be critical. While the recommendation from the RAPWG centered on compliance, there are other relevant departments, like DNS Services and the General Counsel's Office that help facilitate the policy development process.

The Contractual Compliance team will look to collaborate with Contracted Parties and the greater community to streamline the process and interaction when resolving Registrant types of complaints submitted to ICANN. It is expected that improvements with the following will further enhance changes to the compliance system thereby improving appropriate complaint routing and resolution:

- Confirm reporter of problem

- Confirmation of email and contact information

- Determining whether a complaint is already submitted, in process, or closed

- Stabilize communication to individual reporter

- Improve complaint transfers between ICANN and Registrars

- Confirmations on closure of complaints

With respect to GNSO policy development and GNSO requirements for data gathering or other information needs, the ICANN Policy team will continue to serve as the intermediary between the GNSO (WG, DT, or Council) and the various ICANN departments. However, the Policy team has identified that no formal procedure for requesting information among ICANN subject matter expert (SME) teams exists. ICANN Staff may further explore formalizing the process for requesting information (for example custom compliance reports or other collected data on Registrars). This procedure could include workflow documentation, the creation of formal request template (see bulleted list below), and an estimation of effort to determine budget implications, if any, and use of a project request and tracking tool. Requests could constitute at least some of the following attributes:

- Policy or Issue being explored

- Nature of the problem

- Scope of problem or issue to be solved

- Report Requirements

- Responsible Team(s)

- Expected Delivery Date

- Resource estimation

Lastly, another recommendation for enhanced collaboration is that the GNSO Council should consider having relevant ICANN Staff provide updates on activities relating to or affecting GNSO policy, such as compliance and other service functions that support the generic names space. These proposed annual presentations could contain, for example, summaries of annual operations of the Contractual Compliance function, status of policy implementation, accomplishments for the year, as well as, future plans for the coming years. The Contractual Compliance team's creation and execution of the three-year plan is an excellent example because as it approaches conclusion, the next version of a three-year plan or similar strategy exercise will be required and may benefit the GNSO community similarly in its planning. Additionally, the eventual deployment of reporting dashboards and other ICANN reporting mechanisms may help supplement the presentations thus identifying trends where improvements can possibly be made.

6.4 Updates to Policy Development Process Guidelines

Current documentation on the Policy Development Process and Working Group guidelines does not adequately include language around the collection and use of metrics for policy development. Therefore, ICANN Staff suggest that if a Working Group is formed per Section 6.2 that it could also consider possible recommendations to enhance documentation for requesting data in support of PDPs and Working Groups. For example, the WG Charter template may include additional fields asking the Charter development team to identify possible metrics for use in the policy process and to measure success in the case of changes to policy once implemented. If such updates to the PDP process or Working Group guidelines are required, the Standing Committee on Improvements (SCI) may need to review and adopt suggested changes.

Annex 1 – Motions Related to Uniformity of Reporting

20121017-1

Motion to Request an Issue Report on the Uniformity of Reporting

Whereas the Registration Abuse Policies Working Group (RAPWG) identified in its Final Report the 'need for more uniformity in the mechanisms to initiate, track, and analyze policy-violation reports';

Whereas the RAPWG as a result recommended in its Final Report that 'the GNSO and the larger ICANN community in general, create and support uniform reporting processes'.

Whereas the GNSO Council at its meeting on 6 October 2011 requested ICANN Compliance Department to report on existing systems to report and track violations and/or complaints; improvements / changes made since the RAPWG Report or foreseen in the near future, and: identify gaps and any improvements that might be desirable but not foreseen at this stage;

Whereas the ICANN Compliance Department provided a response to the GNSO Council on 18 March 2012 and presented it to the GNSO Council at its meeting on 12 April 2012

(see http://gnso.icann.org/issues/rap/contractual-compliance-report-reporting-uniformity-16mar12-en.pdf);

Whereas the GNSO Council discussed the RAPWG recommendation in light of the feedback received from the ICANN Compliance Department and Mikey O'Connor volunteered to provide some further thoughts on how the RAPWG recommendation could be implemented;

Whereas Mikey O'Connor submitted his proposed approach to the GNSO Council on 3 September 2012 (seehttp://gnso.icann.org/mailing-lists/archives/council/msg13484.html);

Whereas the GNSO Council reviewed and discussed the proposed approach at its meeting on 13 September 2012.

RESOLVED,

The GNSO Council requests an Issue Report on the current state of uniformity in the mechanisms to initiate, track, and analyze policy-violation reports. This issue report should consider the issues highlighted in:

- The RAPWG Final Report, section 9.1 (http://gnso.icann.org/issues/rap/rap-wg-final-report-29may10-en.pdf)
- The ICANN Compliance Department Report (http://gnso.icann.org/issues/rap/contractual-compliance-report-reporting-uniformity-16mar12-en.pdf)

Thought paper from Mikey O'Connor (http://gnso.icann.org/mailing-lists/archives/council/msg13484.html)

In addition to covering the required elements of an Issue Report, ICANN Staff is also explicitly requested to provide its recommendation(s) on how this issue can be further addressed outside of a PDP if recommendations in relation to this issue do not require consensus policies to implement.

20111006-2

Motion to Address the Remaining Registration Abuse Policies Working Group Recommendations

Whereas the Registration Abuse Policies (RAP) Working Group submitted its report to the GNSO Council on 29 May 2010 (see http://gnso.icann.org/issues/rap/rap-wg-final-report-29may10-en.pdf);

Whereas the GNSO Council reviewed the report and its recommendations and decided to form an implementation drafting team to draft a proposed approach with regard to the recommendations contained in the Registration Abuse Policies Working Group Final Report;

Whereas the Registration Abuse Policies Implementation Drafting Team submitted its proposed response to the GNSO Council on 15 November 2010 (see http://gnso.icann.org/correspondence/rap-idt-to-gnso-council-15nov10-en.pdf);

Whereas the GNSO Council considered the proposed approached at its Working Session at the ICANN meeting in Cartagena;

Whereas the GNSO Council acted on a number of RAP recommendations at its meeting on 3 February 2011 (seehttp://gnso.icann.org/resolutions/#201102);

Whereas the GNSO Council requested feedback from ICANN Compliance in relation to WHOIS Access recommendation #2 and Fake Renewal Notices recommendation #1 and a response was received on 23 February 2011 (http://gnso.icann.org/mailing-lists/archives/council/msg10766.html). In addition, a discussion with Compliance Staff was held at the ICANN meeting in San Francisco.
Whereas the GNSO Council considered the remaining RAP recommendations in further detail during its working session at the ICANN meeting in Singapore based on an overview prepared by ICANN Staff (seehttp://gnso.icann.org/correspondence/overview-rapwg-recommendations-18may11-en.pdf).

NOW THEREFORE BE IT:
RESOLVED, the GNSO Council thanks the ICANN Compliance Department for its feedback in relation to WHOIS Access recommendation #2 and determines that no further work on this recommendation is needed. The GNSO Council welcomes the commitment of the ICANN Compliance Department 'to report on compliance activities and publish data about WHOIS accessibility, on at least an annual basis' (see (http://gnso.icann.org/mailing-lists/archives/council/msg10766.html).
RESOLVED, the GNSO Council thanks the ICANN Compliance Department for its feedback in relation to Fake Renewal Notices recommendation #1 and determines that no further work on this recommendation is needed.
RESOLVED, the GNSO Council determines that additional information is needed from the Registrar Stakeholder Group with regard to the conditional Fake Renewal Notices recommendation #2 before an Issue Report should be requested of Staff. 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.
RESOLVED, in response to WHOIS Access recommendation #1, the GNSO Council requests the WHOIS Survey Drafting Team to consider including the issue of WHOIS Access as part of the survey it has been tasked to develop. If the WHOIS Survey Drafting Team is of the view that it is not appropriate or timely to include WHOIS Access as part of the survey, it should inform the GNSO Council accordingly so that the GNSO Council can determine what next steps, if any, might be appropriate at this stage in relation to this recommendation.
RESOLVED, with regard to the recommendation on Meta Issue: Collection and Dissemination of Best Practices, the GNSO Council acknowledges receipt of this recommendation and determines to defer its consideration until it evaluates the outcome of Malicious Use of Domain Names recommendation #1, which aims to develop best practices to help registrars and registries address the illicit use of domain names. In light of the pending request to Staff to develop a Discussion Paper on the Malicious Use of Domain Names, the GNSO Council believes that the upcoming review and analysis of this Discussion Paper may serve to inform the Council of the issues related to the Meta Issue: Collection and Dissemination of Best Practices recommendation.
RESOLVED, in regard to the recommendations on cross-TLD Registration Scam and Domain Kiting/Tasting, the GNSO Council Chair shall communicate to the Security and Stability Advisory Committee (SSAC) the findings of the RAP WG in this regard and request that the SSAC consider evaluating and/or monitoring these abuses. If the SSAC elects to conduct this work, the GNSO Council requests that the SSAC inform the GNSO Council if it believes that further policy work by the GNSO Council should be undertaken to address these two types of abuse. In addition, the GNSO Council suggests that the issue of cross-TLD registration scam be included in the agenda of its next meeting with the ccNSO Council since this type of abuse may also affect ccTLDs.
RESOLVED, in response to the recommendation on Meta Issue: Uniformity of Reporting, the GNSO Council acknowledges receipt of this recommendation, and hereby requests the ICANN Compliance Department to report on existing systems to report and track violations and/or complaints; improvements / changes made since the RAPWG Report or foreseen in the near future, and: identify gaps and any improvements that might be desirable but not foreseen at this stage. Further consideration of this Meta Issue, including the

recommendations and considerations of the RAP WG in this regard, is deferred pending receipt of such information from the ICANN Compliance Department.

RESOLVED, in response to the recommendation on Uniformity of Contracts, the GNSO Council requests an Issue Report 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.

RESOLVED, in response to the recommendations on Gripe Sites, Deceptive and/or Offensive Domain Names recommendation #2, and; Cybersquatting recommendation #2, since the RAPWG did not achieve consensus on these recommendations, the GNSO Council defers undertaking further policy work on these recommendations at this time.

RESOLVED, in response to Gripe Sites; Deceptive and/or Offensive Domain Names recommendation #1, the GNSO Council acknowledges receipt of this recommendation, and agrees with the RAPWG that no further action is called for at this time.

20110203

Motion in response to the Registration Abuse Policies Working Group (RAP WG) final report.
Whereas the Registration Abuse Policies Working Group submitted its report to the GNSO Council on 29 May 2010 (see http://gnso.icann.org/issues/rap/rap-wg-final-report-29may10-en.pdf), and

Whereas the GNSO Council reviewed the report and its recommendations and decided to form an implementation drafting team to draft a proposed approach with regard to the recommendations contained in the Registration Abuse Policies Working Group Final Report, and

Whereas the Registration Abuse Policies Implementation Drafting Team submitted its proposed response to the GNSO Council on 15 November 2010 (see http://gnso.icann.org/correspondence/rap-idt-to-gnso-council-15nov10-en.pdf),

and

Whereas the GNSO Council considered the proposed approached at its Working Session at the ICANN meeting in Cartagena.

RESOLVED #1, the GNSO Council instructs ICANN Policy Staff to forward the two issues identified by the RAP IDT as having low resource requirements, WHOIS Access recommendation #2 and Fake Renewal Notices recommendation #1, to ICANN Compliance Staff for resolution. ICANN Compliance Staff is requested to provide the GNSO Council with its feedback on the two recommendations and proposed implementation in a timely manner.

RESOLVED #2, the GNSO Council requests an Issues Report on the current state of the UDRP. This effort should consider:

- How the UDRP has addressed the problem of cybersquatting to date, and any insufficiencies/inequalities associated with the process.

- Whether the definition of cybersquatting inherent within the existing UDRP language needs to be reviewed or updated. The Issue Report should include suggestions for how a possible PDP on this issue might be managed.

RESOLVED #3, the GNSO Council requests a discussion paper on the creation of non-binding best practices to help registrars and registries address the abusive registrations of domain names in accordance with the Registration Abuse Policies Working Group Final Report.
This effort should consider (but not be limited the following subjects:

- Practices for identifying stolen credentials

- Practices for identifying and investigating common forms of malicious use (such as malware and phishing)

- Creating anti-abuse terms of service for possible inclusion in Registrar-Registrant agreements by registrars who adopt them, and for use by TLD operators who adopt them.

- Identifying compromised/hacked domains versus domain registered by abusers'

- Practices for suspending domain names

- Account access security management

- Security resources of use or interest to registrars and registries

- Survey registrars and registries to determine practices being used, and their adoption rates.

RESOLVED #4 (As proposed by Zahid Jamil): Resolved, the GNSO Council instructs ICANN Policy Staff to add the remaining RAP Recommendations to the GNSO Project List so that the GNSO Council can keep track of the remaining recommendations and address these as appropriate. These remaining RAP Recommendations are:

- WHOIS Access – Recommendation #1: The GNSO should determine what additional research and processes may be needed to ensure that WHOIS data is accessible in an appropriately reliable, enforceable, and consistent fashion.
  The GNSO Council should consider how such might be related to other WHOIS efforts, such as the upcoming review of WHOIS policy and implementation required by ICANN's new Affirmation of Commitments.

- Uniformity of Contracts:
  View A: The RAPWG recommends the creation of an Issues Report 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.
  View B: Opposed to the recommendation for an Issues Report as expressed in view A

- Gripe Sites; Deceptive and/or Offensive Domain Names – Recommendation #1:
  Rough Consensus: Make no recommendation. The majority of RAPWG members expressed that gripe site and offensive domain names that use trademarks should be addressed in the context of cybersquatting and the UDRP for purposes of establishing consistent registration abuse policies in this area, and that creating special procedures for special classes of domains, such as offensive domain names, may present problems.
  Alternate view: The URDP should be revisited to determine what substantive policy changes, if any, would be necessary to address any inconsistencies relating to decisions on "gripe" names and to provide for fast track substantive and procedural mechanisms in the event of the registration of deceptive domain names that mislead adults or children to objectionable sites.

- Cybersquatting – Recommendation #2:
  View A: The RAPWG recommends the initiation of a Policy Development Process by requesting an Issues Report to investigate the appropriateness and effectiveness of how any Rights Protection Mechanisms that are developed elsewhere in the community (e.g. the New gTLD program) can be applied to the problem of cybersquatting in the current gTLD space.
  View B: The initiation of such a process is premature; the effectiveness and consequences of the Rights Protection Mechanisms proposed for the new TLDs is unknown. Discussion of RPMs should continue via the New TLD program. Experience with them should be gained before considering their appropriate relation (if any) to the existing TLD space.

- Fake Renewal Notices – Recommendation #2 – conditional on #1: The following recommendation is conditional. The WG would like to learn the ICANN Compliance Department's opinions regarding Recommendation #1 above, and the WG will further discuss Recommendation 2 looking forward to the WG's Final Report.
  The RAPWG recommends the initiation of a Policy Development Process by requesting an Issues Report to investigate fake renewal notices.

- Meta Issue: Collection and Dissemination of Best Practices: The RAPWG recommends that the GNSO, and the larger ICANN community in general, create and support structured, funded mechanisms for the collection and maintenance of best practices.

- Cross-TLD Registration Scam: The RAPWG recommends the GNSO monitor for Cross-TLD registration scam abuse in the gTLD space and co-ordinate research with the community to determine the nature and extent of the problem. The WG believes this issue warrants review but notes there is not enough data at this time to warrant an Issues Report or PDP.

- Meta Issue - Uniformity of Reporting: The RAPWG recommends that the GNSO, and the larger ICANN community in general, create and support uniform reporting processes.

- Gripe Sites; Deceptive and/or Offensive Domain Names – Recommendation #2:
  View A: Turn down a proposed recommendation that registries develop best practices to restrict the registration of offensive strings.
  View B: Registries should consider developing internal best practice policies that would restrict the registration of offensive strings in order to mitigate the potential harm to consumers and children.

- Domain Kiting / Tasting: It is unclear to what extent domain kiting happens, and the RAPWG does not recommend policy development at this time. The RAPWG suggests that the Council monitor the issue (in conjunction with ongoing reviews of domain-tasting), and consider next steps if conditions warrant.