

7 March 2023

**Re: Response to GNSO Council Letter on DNS Abuse Contract Negotiations**

Sebastien Ducos, GNSO Chair, via email

Dear Mr. Ducos and the GNSO Council:

The Contracted Parties House (CPH) would like to thank the GNSO and particularly the GNSO DNS Abuse small team for their ongoing efforts on DNS Abuse and the opportunity to provide additional information on potential gaps in both the Registry Agreement (RA) and Registrar Accreditation Agreement (RAA) DNS Abuse provisions.

In your letter dated 6 January 2023, the GNSO Council highlighted two provisions, one from the RA and one from the RAA, that the GNSO small team identified as containing potential gaps “in the interpretation and/or enforcement of the current agreements.” The CPH responds to each concern individually below.

**Registrar Accreditation Agreement**

Regarding the RAA, the GNSO Council’s letter stated:

For RAA Section 3.18.1 (“Registrar shall take reasonable and prompt steps to investigate and respond appropriately to any reports of abuse”), it is unclear what “reasonable”, “prompt”, and “appropriately” mean, even though ICANN Contractual Compliance indicated that they enforce in the case of inaction. The ICANN Contractual Compliance response also indicated that “(t)he RAA does not require registrars to take any specific action on the domain names that are subject to abuse reports.” And that “(t)he RAA does not prescribe the specific consequences that registrars must impose on domain names that are subject to abuse reports though”. This interpretation may allow DNS abuse to remain unmitigated, depending upon the registrar’s specific domain name use and abuse policies.

The Registrar Stakeholder Group (RrSG) is pleased to inform the GNSO small team that it is currently attempting to address those issues within the existing text of RAA Section 3.18

through the ongoing contractual negotiations with ICANN. Through these negotiations, we hope to add clarifying language to the RAA that will allow ICANN Contractual Compliance to enforce an obligation that registrars take appropriate actions to mitigate and/or disrupt DNS Abuse when it is reported to them.

We appreciate that the GNSO has expressed concerns with language such as “reasonable”, “prompt”, and “appropriately” and hope to bring clarity to what is considered reasonable and appropriate action on DNS Abuse through both the RAA amendment process.

### **Registry Agreement**

Regarding the RA, the GNSO Council’s letter stated:

For the Registry Agreement Specification 11, Section 3(a) it says “include a provision in their agreement with registrars,’. This requirement is limited to the inclusion of the provision. However, further consideration may need to be given to what Registries are doing to ensure the text is indeed included in the Registration Agreement (i.e. Registries enforcing their own Registry-Registrar Agreements).

Noting that the RySG is currently engaged with ICANN to clarify registry obligations with respect to mitigating DNS Abuse, the RySG does not believe there are any interpretation or enforceability gaps in relation to Specification 11(3)(a). As drafted, this text requires that registries include a provision in their respective Registry-Registrar Agreements (RRAs) that the registrars have to incorporate in their Registration Agreements with registrants. To our knowledge, these obligations are being met and will remain in place. Indeed, adherence to this obligation was specifically audited by ICANN Contractual Compliance in the most recent round of Registry audits.

As to the substance of what is included in the pass-through provisions of Specification 11(3)(a), those extend beyond DNS Abuse and include areas of website content abuse (i.e. “piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law”). Accordingly, that provision falls outside the current efforts undertaken by the CPH to better address DNS Abuse and generally falls into website content abuse, which is outside of ICANN’s remit and this contract amendment discussion.

The CPH would like to reiterate our appreciation to the GNSO and the GNSO small team for their proactive steps in addressing the ongoing issue of DNS Abuse. Redline draft versions of the RA and RAA will be subject to a public comment period, which we anticipate will be around ICANN 77. We further appreciate the GNSO Council's continued interest in engaging in open discussions with the CPH and look forward to constructive feedback at the appropriate time from the GNSO Council and the ICANN community.

Sincerely,

Ashley Heineman, RrSG Chair  
Beth Bacon, Acting RySG Chair