

Human Rights Gap Analysis for ICANN's Amendments to the Base gTLD RA and RAA to Modify DNS Abuse Contract Obligations

Final Report

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Acknowledgments

Many people helped with this project, and we are grateful to everyone who put in their time and effort to make it a success.

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About the CCWP-HR

The CCWP-HR is a multistakeholder forum currently chartered as a sub-entity of the Non-Commercial Stakeholder Group (NCSG) within the Generic Name Supporting Organisation (GNSO) but remains open to the rest of the Internet Corporation for Assigned Names and Numbers (ICANN) community for research and discussion on the relationship between human rights and global Domain Name System (DNS) coordination. This is related — but not limited — to policies, procedures, and operations, with a particular focus on ICANN's responsibility to respect human rights. The primary goal of the CCWP-HR is to provide information, facilitate dialogue, and make suggestions to ICANN Org, its Board of Directors, and the ICANN community on ways to better harmonize ICANN's policies and procedures with internationally recognized human rights laws and corporate social responsibility standards. Membership is open to any interested individual, regardless of affiliation.

About the Authors

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Maryam Lee has 10 years of experience in human rights advocacy, policy making, and capacity building to nurture a progressive society. She is trained as an educator and is passionate about development. She is currently working on business and human rights in digital spaces in an effort to harmonize human rights and technology.

Introduction

In June 2023, ICANN published the Amendments to the Base gTLD Registry Agreement (RA) and Registrar Accreditation Agreement (RAA) to Modify Domain Name System (DNS) Abuse Contract Obligations.

We welcome ICANN's decision to release the document in its entirety, in line with Workstream 2 Recommendations on ICANN Transparency. This statement is made on our own behalf. We also endorse comments by the Non Commercial Stakeholder Group (NCSG) and Non Commercial Users Constituency (NCUC).

We welcome the definitions, but urge amendments to make it clear that this will not be a slippery slope to allow for ICANN Contracted Parties to use the tool to address matters outside of ICANN's remit. We also urge procedural safeguards that will allow registrants to have their rights respected and protected.

Definitional Clarity- The proposed Specification 11 changes the term “security threats” to “DNS Abuse”. Additionally, the drafting of section 4.1 of Proposed gTLD RA limits the definition of “DNS Abuse” to “malware, botnets, phishing, pharming, and spam (when spam serves as a delivery mechanism for the other forms of DNS Abuse listed in this Section), as those terms are defined in Section 2.1 of an ICANN Security and Stability Advisory Committee (SSAC) Report called, “SAC115 (<<https://www.icann.org/en/system/files/files/sac-115-en.pdf>>)”

We echo the NCSG, which stated in its Public Comment that, “The term “Security threat” amply defines the issue, which is the threat to the DNS. DNS abuse will open issues for conversation and debate later on.”

We thus recommend there ought to be no changes of the previous terms to “DNS Abuse.” ICANN ought to continue the use of the terms “Security threat” and that the only changes to Specification 11 ought to be the inclusion of the following disclaimer in the Specification 11 text, “ICANN will not encourage Contracted Parties to broadly interpret its obligations to include items beyond ICANN's mandate, such as content or any other issues beyond the scope of ICANN Bylaws.”

Right to Due Process

There are several concerns regarding the lack of clear due process mechanisms that must be addressed before further actions are taken as part of countering DNS Abuse.

Fundamentally, registrants are not properly involved in decisions. None of the documents provided as part of the public consultation process provide a method for involving a registrant before the suspension or termination of a domain name.

Registries are not required to notify or provide justification to registrants when their domain names have been suspended because of alleged or 'potential' DNS abuse. Moreover, there are no meaningful appeal mechanisms to challenge these decisions.

Registrants/ users have a right to due process under international law¹. Within the DNS ecosystem, this would require registries or registrars to proactively disclose the policies that govern their relationships with registrants and be accountable to registrants while making any and all decisions that impact them. The right to due process at the DNS level gives registrants the ability to comprehend why a registry or registrar might reject their registration for a name, suspend their domain, or delete their domain name. The right also allows the registrant to have an adequate opportunity to challenge the validity of the decision and assert any privileges associated with their domain name, including the right to an appeals process and the ability to make necessary amendments to their domain names.

We thus urge that the drafts be amended to ensure compliance with the notification principle under the [13 International Necessary and Proportionate Principles](#) and the [Santa Clara Principles](#). For example, where a third party has made a complaint about a specific domain, the policy ought to provide for notification to the registrant at the earliest opportunity. Failure to adhere to notification requirements may create a culture of lack of due process.

Conclusion

CCWP-HR is grateful to have participated in this public comment process in accordance with the November 2019 ICANN Board approval of the FOI-HR.

We welcome feedback on any aspect of this initiative and extend an open invitation to any interested individuals to get involved in the next phase of work. To become a member of the Cross-Community Working Party on ICANN and Human Rights (CCWP-HR), visit [the CCWP-HR page](#) on the ICANN Community website.

¹ The right to due process is provided under article 14 of the International Convention on Civil and Political Rights (ICCPR) which states that, "...*All persons shall be equal before the courts and tribunals...everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*"