Report of Public Comments

Title:	Preliminary Issue Report on Uniformity of Contracts to Address Registration Abuse
Publication Date:	19 September 2012
Prepared By:	Marika Konings

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Staff Contact:	Marika Konings	**Email:**	Policy-staff.icann.org

Section I: General Overview and Next Steps

The Preliminary Issue Report was published in response to a request by the GNSO Council for an Issue Report on the topic of Uniformity of Contracts, as a required preliminary step before a Policy Development Process (PDP) may be initiated. The objective of a possible PDP would be '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'.

In an attempt to develop a complete picture of the existing abuse provisions for the Issue Report, ICANN Staff reviewed 17 different gTLD registry and registry-registrar agreements, and several other publicly available documents on registry websites that relate to contractual rights and obligations associated with abuse (e.g., Acceptable Use Policies and Terms of Agreement). In general, Staff discovered:

1. Existing Registry Agreements generally do not include specific provisions to address abuse
2. To the extent existing agreements address activities that might be defined as abuse, there is little in the way of common language across agreements to identify those activities
3. Where registries include specific provisions for dealing with various types of abuse, there is evidence that the provisions can be effective
4. Regardless of whether the agreements contain registration abuse provisions, registration abuse still exists in the domain name industry

Staff confirmed that a PDP regarding the potential development of uniform baseline Registration Abuse policies for use in ICANN contracts is within the scope of the ICANN Policy Process and the GNSO. Consequently, Staff recommended that the Council initiate a Policy Development Process on this topic. Should the PDP proceed, Staff suggested that the working group conduct further research, as follows:

- Understand if registration abuses are occurring that could be addressed more effectively if consistent registration abuse policies were established;
- Determine if and how (registration) abuse is dealt with in those registries (and registrars) that do not have in place any specific provisions or policies to address abuse; and
- Identify how registration abuse provisions, where they exist, are implemented in practice and whether they are effective in addressing registration abuse.

The Preliminary Issue Report was published for public comment on 25 July 2012.

Next Steps

This report of public comments will be included as part of the Final Issue Report and the report will be updated, as deemed appropriate. Based on the review of the Final Issue Report, the GNSO Council will decide whether or not to initiate a PDP on uniformity of contracts to address registration abuse

Section II: Contributors

At the time this report was prepared, a total of five (5) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
International Federation of Intellectual Property Attorneys	Rebecca Sandland	FICPI
ISPs and Connectivity Providers Constituency	Mikey O'Connor	ISPCP
Internet Commerce Association	Philip Corwin	ICA
gTLD Registries Stakeholder Group	David Maher	RySG
The Messaging, Malware and Mobile Anti-Abuse Working Group	Jerry Upton	M3AAWG

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

FICPI, ISPCP, ICA and M3AAWG all express their support for developing uniformity of contracts to address registration abuse. The RySG notes its 'willingness to prevent registration abuse when possible and to do so in ways that are effective'.

FICPI emphasizes in its comments that the list of abuses detailed in the Preliminary Issue Report as well as any policy that may follow from this work should be considered indicative and not exhaustive.

The ISPCP supports the initiation of a Policy Development Process to explore this issue in further detail and suggests that further work should include:

- A framework of metrics to measure the extent and trends of registration abuse activity
- A benchmark study to understand the current state of the problem, which can also be used as a basis to evaluate the effectiveness of various registration abuse provisions and policies
- An ongoing reporting mechanism to track changes in the level and nature of registration abuse activity and effectiveness of changes in policy and practice
- An evaluation of the benefit that may be gained by establishing a minimum framework

ICA does not support the initiation of a PDP to conduct this work but suggests that instead 'ICANN's legal staff prepare draft provisions for the relevant in scope ICANN agreements that are as uniform as possible and that address the limited number of registration abuses at issue, and that these draft provisions should be put out for comment by contracted parties as well as the ICANN community'.

The RySG suggests that the report should be more precise when it aims to define what agreements are considered to be in scope for a GNSO PDP.

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

Staff will update the Issue Report by including this summary of public comments for review by the GNSO Council. In addition, Staff will update the report to include the suggestions made by the different commenters for further specificity on certain issues (FICPI, RySG), the alternative option suggested to conduct this work (ICA) and the additional tasks identified should a PDP proceed (ISPCP).