The ICANN GNSO "Business Constituency"

Comment on Competition, Consumer Trust, and Consumer Choice Review Team (CCTRT) – New Sections to Draft Report of Recommendations

Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

> The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:
> 1. promotes end-user confidence because it is a safe place to conduct business
> 2. is competitive in the supply of registry and registrar and related services
> 3. is technically stable, secure and reliable.

BC Response to CCTRT Report: New Sections

The BC thanks the CCTRT for their dedication and this important work on parking, the cost to brand owners, and DNS abuse, and submits the following observations on New Sections to the CCT Report published on 27-Nov-2017.[1]

As a general introduction we fully agree with this assessment on page 3:

> "Rates of DNS Abuse are unsettlingly high in some TLDs and Contract Compliance appears unable or unwilling to approach the issue holistically".

This situation cannot be allowed to continue. It is contrary to the entire ethos of TLD management within ICANN, and such an unclean environment damages genuine businesses and consumers and undermines trust in the DNS as a whole.

Parking/Competition

We applaud the CCTRT for not making assumptions as to the potential impact of parking on competition and the correlation between parking and abuse, particularly malware, in the absence of statistical evidence. We commend the detailed examination of potential scenarios and variants. We fully support the proposed data collection that will allow such impacts to be illuminated and results on the market to be better understood.

- *Recommendation 5: the BC is in full support.*

Cost to Brand Owners/Consumer Choice

The mission of the BC includes the promotion of end-user confidence in the Internet because it is a safe place to conduct business. That includes consumer trust that the use of a brand name within a domain name is not deceptive. To grow a recognizable brand, the brand owner must invest heavily in product development/creation, innovation and after-sales service, all of which are dependent on the badge of origin given to the consumer in the guise of a brand name. This name is usually a registered trade mark, which is granted at either national, regional or multi-national level, according to the relevant laws and practices of each state.

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[1] ICANN comment page at https://www.icann.org/public-comments/cct-recs-2017-11-27-en. Competition, Consumer Trust and Consumer Choice (CCT) New Sections, at https://www.icann.org/en/system/files/files/cct-rt-draft-recs-new-sections-27nov17-en.pdf

When this investment and reputation are usurped to deceive consumers, to "bait" them, as described in the Abuse section, or to divert brand holders' resources towards registrants who offer neither value nor benefit to anyone but themselves, it is a concern for the brand holder and for all that wish to maintain the integrity of the online business environment.

Defensive registrations do not promote either consumer choice or competition – they are simply a sunk cost of no benefit to the DNS, the market or the end-user. They offer nothing in terms of consumer choice, improved competition, innovation or indeed any general societal or economic benefit whatsoever. Further, increased monitoring and enforcement costs serve only to divert brand holders' resources from their core business of producing goods and services that consumers trust and enjoy, again for no consumer or societal benefit. We fully agree to the need to better understand the impact of defensive and/or multiple registrations in the entire TLD ecosystem.

- *Recommendation 9: the BC is in full support.*

DNS Abuse/Safeguards

The BC commented on the recent Statistical Analysis of DNS Abuse in new gTLDs Report (SADAG Report)[2], which showed that the nine technical safeguards developed for the New gTLD Program did not in fact result in lower abuse levels. To cite just one example regarding abuse points of contact, we learned that there is no standard by which ICANN compliance assesses the effectiveness of registries in resolving abuse complaints. That was worrying, since a process is only as good as its implementation.

The results of the SADAG Report showing that registration restrictions, prices, and registrar-specific practices all affect abuse rates tally with the experience of BC members. We are also not surprised to learn that miscreants are remaining active in legacy gTLDs, and have moved into some areas of the new gTLD space.

The BC registers disappointment that the "sustained, unabated, high abuse rates were not the actionable reason" for ICANN suspending the Nanjing Registrar, and that it seems no action has been taken against Alpnames. ICANN accreditation should bring with it more responsibilities than simply paying into the ICANN budget.

We call on ICANN Compliance to understand the very real concerns that the community must share when such matters surface. The BC is in full agreement with the CCTRT's concern about "the high levels of DNS abuse concentrated in a relatively small number of registries and registrars and geographic regions" which "appears to have gone unremedied for an extended amount of time in some cases".

- Recommendation A: Consider directing ICANN org, in its discussions with registries, to negotiate amendments to existing Registry Agreements, or in negotiations of new Registry Agreements associated with subsequent rounds of new gTLDs to include provisions in the agreements providing incentives, including financial incentives for registries, especially open registries, to adopt proactive anti-abuse measures.

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[2] BC Comment on Statistical Analysis of DNS Abuse in new gTLDs Report (SADAG Report) , at http://www.bizconst.org/assets/docs/positions-statements/2017/2017_09_september%2027%20bc%20comment%20on%20dns%20abuse%20report1.pdf

The BC supports the idea of rewarding good registry/registrar practice (as noted in our Jul-2016 comment on Amendments to the Base New gTLD Registry Agreement[3]), and asks that this be a clear recommendation rather than merely a "consideration", provided that the community is expressly engaged up-front and throughout such negotiations. Fee incentives also could offset some costs of implementing proactive measures, which could lead to a more trusted – and hopefully more successful – TLD, bringing both commercial and general benefit.

An important aspect to implementing this Recommendation, however, is community input and transparency in ICANN Org actions. Prior to ICANN entering any structured negotiations with registries (including bilateral negotiations), there should be agreement between the community and ICANN Org on objectives and a data-driven fee reduction process with clear criteria that encourages the mitigation of abusive domain names.

Ultimately, a decision to reduce fees must be the result of a community process where all pros and cons can be assessed and we have confidence that the results will encourage the mitigation of abusive domain names and thereby promote internet security and a healthy domain name ecosystem.

For example, registries with high percentages of abusive domains are not good candidates to receive fee reductions. Nor should ICANN fees be reduced so as to enable a registry to reduce its domain wholesale pricing to the point where ultra-cheap second-level domains could actually cause increased DNS abuse. The SADAG report noted that "registry operators of the most abused new gTLDs compete on price." [4]

- Recommendation B: Consider directing ICANN org, in its discussions with registrars and registries to negotiate amendments to the Registrar Accreditation Agreement and Registry Agreements, to include provisions aimed at preventing systemic use of specific registrars for technical DNS abuse.

  The BC supports this idea as a recommendation rather than merely a "consideration", provided that the community is expressly engaged up-front and throughout such negotiations. The BC believes that ICANN Org and the community have a collective duty to prevent systemic abuse of specific registrars, along with the corollary that enforcement and sanctions also are vital.

  An important element to implementing this Recommendation, however, is community input and transparency in ICANN Org actions. Prior to ICANN entering any structured negotiations with registries or registrars (including bilateral negotiations), there should be agreement between the community and ICANN Org on objectives. It is vital that ICANN operate in an open and transparent manner and involve the multistakeholder community, particularly when contracted parties are involved. As stated previously by the BC, changes to registry and registrar agreements directly affect the broader community and the internet in innumerable

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[3] BC comment on Amendments to the Base New gTLD Registry Agreement, Jul-2016, at
http://www.bizconst.org/assets/docs/positions-statements/2016/2016_07july_20%20bc%20comment%20on%20proposed%20gtld%20base%20registry%20agreement%20final.pdf

[4] Statistical Analysis of DNS Abuse in gTLDs Final Report (SADAG), p. 25, at
https://www.icann.org/en/system/files/files/sadag-final-09aug17-en.pdf

ways. Therefore, discussions and negotiations on changing them is the business of the entire ICANN community—not just ICANN Org and the contract parties.

- Recommendation C: Further study the relationship between specific registry operators, registrars and DNS abuse by commissioning ongoing data collection, including but not limited to, ICANN Domain Abuse Activity Reporting (DAAR) initiatives. This information should be regularly published for transparency purposes in order to identify registries and registrars that need to come under greater scrutiny and higher priority by ICANN Compliance. Upon identifying abuse phenomena, ICANN should put in place an action plan to respond to such studies, remediate problems identified, and define future ongoing data collection.

    The BC supports this recommendation and looks forward to providing substantive input as DAAR and related efforts evolve, since ensuring that actions are evidence-based through data collation should not be contentious. The suggested transparency would also serve to persuade less compliant registries/registrars to improve.

    The BC, along with other constituencies and advisory committees, has long called for ICANN to make the collection, analysis, and publication of data a reality. We renew our call to provide public access to DAAR, the Open Data Initiative data, and related efforts. We recommend community-wide involvement in their implementation. The BC requests that the CCTRT reinforce this in their report.

- Recommendation D: A DNS Abuse Dispute Resolution Policy ("DADRP") should be considered by the community to deal with registry operators and registrars that are identified as having excessive levels of abuse (to define, e.g. over 10% of their domain names are blacklisted domain names). Such registry operators or registrars should in the first instance be required to a) explain to ICANN Compliance why this is, b) commit to clean up that abuse within a certain time period, and / or adopt stricter registration policies within a certain time period. Should ICANN not take any action themselves, a DADRP can be invoked.

    The BC supports this recommendation and looks forward to helping develop an effective policy and implementation plan that complements sustained and diligent efforts by ICANN Compliance to mitigate DNS abuse. Further, the BC requests that the CCTRT also recommend that ICANN Compliance has sufficient resources to do its job robustly and properly.

    The BC believes the rationale behind DADRP is sound, being both practical and fair, giving a process for the registry/registrar to explain why it has not (or could not) mitigate technical DNS abuse before being found to be in breach of the RA/RAA. We also agree that there must be effective sanctions as an enforcement tool.

DNS Abuse/RPMs

We appreciate the CCTRT's concern to avoid straying into the territory of the RPM PDP, but hope that the two work streams will cross-fertilize as appropriate. We agree with the CCTRT that the INTA survey provides a useful set of data as it was rigorously sourced from global brands with deep experience in domain name matters. Its results are interesting and mirror anecdotal evidence from our own members.

We repeat that no-one benefits from consumer deception, and the many and varied players on the ICANN stage all want a trustworthy and competitive space where innovation and fair competition are rewarded and bad players cannot be allowed to flourish and act as parasites on the DNS.

- *Recommendation 40: Given the proven difficulty in obtaining evidence of the impact of the New gTLD Program on trade mark protection, the proposed regular impact study should be welcomed.*

- *Recommendation 41: While we support this proposal, it should be transferred into the work of the RPM PDP, as a recommendation from the CCTRT.*

- *Recommendation 42: While we support this, it should be transferred into the RPM PDP.*

Conclusion

Once again, the BC applauds the CCTRT for their in-depth work and trusts that the entire ICANN community shares the common goal of ensuring a safe and trustworthy DNS for all.

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This comment was drafted by Marie Pattullo, Steve DelBianco, Denise Michel, and Chris Wilson.

It was approved in accordance with the BC charter.