ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

March 20, 2020

Re: WIPO Arbitration and Mediation Center observations on Draft Report of *second Security, Stability, and Resiliency (SSR2) Review Team*

The following observations are submitted to assist the SSR2 Review Team's review of "ICANN's execution of its commitment to enhance the operational stability, reliability, resiliency, security, and global interoperability of the systems and processes, both internal and external, that directly affect and/or are affected by the Internet's system of unique identifiers that ICANN coordinates."

Broadly speaking we support the below-listed draft recommendations (in bold, using the SSR2 numbering) and offer the following comments in support:

12. Create Legal and Appropriate Access Mechanisms to WHOIS Data

ICANN's continued delay in facilitating a centrally-coordinated mechanism for standardized access to non-public registrant data is harming a range of legitimate causes, including law enforcement, security researchers, and intellectual property owners and consumers.[1] Beyond fostering scalability and predictability in all stakeholders' interests, developing such an access model would remove a current risk faced by Contracted Parties in assessing WHOIS disclosure requests.[2]

WIPO remains willing to assist efforts to develop such a mechanism e.g., in an accreditation body capacity.

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[1] As stated by the Interpol representative at the ICANN Meeting in Barcelona, "investigations are affected by [and] have been slowed down or have been challenged by WHOIS." It should moreover be noted that while a significant percentage of registration data in today's WHOIS system is believed to be false or inaccurate, the GDPR demands data accuracy, including requiring that "reasonable step[s] must be taken to ensure that personal data [...] are rectified without delay."

[2] See e.g., https://about.fb.com/news/2020/03/domain-name-lawsuit.

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13. Improve the Completeness and Utility of the Domain Abuse Activity Reporting Program

To the extent ICANN would consider UDRP cases as part of any DAAR or Domain Name Marketplace Indicators, it should be noted that while the UDRP supports consumer trust, this is trust earned only after significant time and expense is invested by brand owners (and in some cases only after a fraud has been perpetrated on end users).

The continued availability of the UDRP, as operated by WIPO on a not-for-profit basis, moreover benefits Contracted Parties and ICANN by keeping them out of disputes.

The fact that WIPO has seen record-breaking numbers of UDRP cases over the years illustrates that the root issue of cybersquatting is not itself being addressed.[3] To this end ICANN may wish to look at programs instituted in the .EU[4] and .DK[5] domain spaces.

14. Enable Rigorous Quantitative Analysis of the Relationship Between Payments for Domain Registrations and Evidence of Security Threats and Abuse

Part of any meaningful look at payments for domains used to perpetuate abuse would also look at data accuracy under the umbrella of anti-fraud know-your-customer norms (which would in turn call for a timely resolution of PPSAI independent of EPDP work).

15. Enhance Contracts with Registrars and Registries to Incent the Mitigation of DNS Abuse

ICANN could consider incentives such as "audit credits" to incentivize adoption of best practices.

For example, EURid has launched an Abuse Prevention and Early Warning System, such that if EURid "identifies a registered domain name as potentially linked to abuse, its delegation in the .eu zone file is delayed and … manually review[ed] … to confirm [the registrant's] identity."

In the same spirit, the .DK registry has adopted a process to verify registrant identity to prevent cybercrime and also to support anonymity for privacy registrations.

17. Establish a Central Abuse Report Portal

In addition to a Central Abuse Report Portal, any measures that ICANN or a Contracted Party implements to address a reported abuse should be published along with the responses.

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[3] In 2011 when asked about the UDRP review, we stated: "Review of 'registration abuse' should focus on cybersquatting, not on the UDRP: The invoked 'passage of time' is not a compelling motive for UDRP revision where contemporary expert assessment so clearly recognizes this mechanism's overall positive functioning. If age were a relevant standard, any intellectually honest effort would focus on the persistence of the much older yet less transparent practice of cybersquatting: its drivers, its beneficiaries, and the extent to which it funds the DNS."
See https://www.wipo.int/amc/en/docs/icann150711.pdf.

[4] See https://eurid.eu/en/news/eurid-set-to-launch-first-of-its-kind-domain-name-abuse-prevention-tool.

[5] See https://www.sidn.nl/en/news-and-blogs/how-eids-are-improving-security-on-the-danish-internet.

18. Ensure that the ICANN Compliance Activities are Neutral and Effective

To support the recommendation of ICANN increasing its Compliance efforts, serious consideration should be given to addressing – to use ICANN's word – the "discrepancy" identified in ICANN's letter of February 12, 2020 to the Business Constituency that ICANN's compliance obligations are limited to ensuring that a registrar includes an abuse policy clause in its registration agreement.

Such self-imposed limitation can hardly be said to underpin a compliance program that is stated to support the security and stability of the global Internet, upon which business and consumers rely.

19. Update Handling of Abusive Naming

Using so-called homograph spoofing, cybersquatters sometimes take advantage of visual similarity between character sets. ICANN may wish to explore technical (if not contractual) means to enforce the prohibition on the registration of mixed-script domain names combining ASCII with non-ASCII characters which do not minimize user confusion.[6]

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Thank you for your consideration.

These observations are posted on the WIPO website at:
www.wipo.int/amc/en/domains/resources/icann.

Yours sincerely,

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[6] ICANN's Guidelines for the Implementation of Internationalized Domain Names Version 4.0 (dated May 10, 2018) establish that: "All code points in a single IDN label must be taken from the same Unicode script as determined by the Unicode Standard Annex #24 [and in] the case of any exceptions made allowing mixing of Unicode scripts, visually confusable characters from different scripts must not be allowed to co-exist in a single set of permissible code points unless a corresponding IDN policy and IDN Table is clearly defined to minimize confusion between domain names."