



# Key contract provisions re abuse

Allen R. Grogan | ICANN 56 | 27 June 2016

## Section 3.7.7.9 of the 2013 RAA

The Registration Agreement with the Registered Name Holder must include a provision by which “the Registered Name Holder shall represent that, to the best of the Registered Name Holder's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party.”

Section 3.7.7 obligates the Registrar to “use commercially reasonable efforts to enforce compliance with the provisions of the registration agreement between Registrar and any Registered Name Holder that relate to implementing” [this requirement]

## Section 3.18.1 of the 2013 RAA

Registrar shall maintain an abuse contact to receive reports of abuse involving Registered Names sponsored by Registrar, including reports of Illegal Activity. Registrar shall publish an email address to receive such reports on the home page of Registrar's website (or in another standardized place that may be designated by ICANN from time to time). Registrar shall take reasonable and prompt steps to investigate and respond appropriately to any reports of abuse.

## Section 3.18.2 of the 2013 RAA

Registrar shall establish and maintain a dedicated abuse point of contact, including a dedicated email address and telephone number that is monitored 24 hours a day, seven days a week, to receive reports of Illegal Activity by law enforcement, consumer protection, quasi-governmental or other similar authorities designated from time to time by the national or territorial government of the jurisdiction in which the Registrar is established or maintains a physical office. Well-founded reports of Illegal Activity submitted to these contacts must be reviewed within 24 hours by an individual who is empowered by Registrar to take necessary and appropriate actions in response to the report. In responding to any such reports, Registrar will not be required to take any action in contravention of applicable law.

## Section 3.18.3 of the 2013 RAA

Registrar shall publish on its website a description of its procedures for the receipt, handling, and tracking of abuse reports. Registrar shall document its receipt of and response to all such reports. Registrar shall maintain the records related to such reports for the shorter of two (2) years or the longest period permitted by applicable law, and during such period, shall provide such records to ICANN upon reasonable notice.



# Section 4, Spec. 6, new gTLD Registry Agreement

**4.1 Abuse Contact.** Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquiries related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.

**4.2 Malicious Use of Orphan Glue Records.** Registry Operator shall take action to remove orphan glue records (as defined at <http://www.icann.org/en/committees/security/sac048.pdf>) when provided with evidence in written form that such records are present in connection with malicious conduct.

# Section 3a, Spec 11, new gTLD Registry Agreement

Registry Operator will include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.

This provision is a Public Interest Commitment (“PIC”).

# Enforcement of Public Interest Commitments

Public Interest Commitments (“PICs”) are part of the contract between ICANN and the Registry Operator and are subject to enforcement by ICANN’s contractual compliance department in the ordinary course of its enforcement activities.

The Public Interest Commitments Dispute Resolution Procedure (“PICDRP”) <http://newgtlds.icann.org/en/applicants/agb/picdrp-19dec13-en.pdf> provides a potential alternative or parallel mechanism for a harmed party to pursue remedies, but it does not preclude or limit ICANN from enforcing the PICs through its normal contractual compliance process and timetable.

Nothing in the PICDRP limits harmed parties, regulatory authorities or law enforcement from pursuing other available remedies against the party causing harm (whether a Registry Operator, Registrar or registrant), including, for example, pursuing remedies through administrative, regulatory or judicial bodies to seek fines, damages, injunctive relief or other remedies available at law.



# Section 3b, Spec 11, new gTLD Registry Agreement

Registry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. Registry Operator will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operator will maintain these reports for the term of the Agreement unless a shorter period is required by law or approved by ICANN, and will provide them to ICANN upon request.



**Thank You and Questions**