

# Pre-ICANN77 ALAC-GNSO Council Bilateral Prep

## Update/Consultation with the At-Large CPWG

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# Agenda with GNSO Council

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## Pre-ICANN77 ALAC-GNSO Council Bilateral Call on 6 June 2023 at 13:00 UTC

### 1. **Next Round of New gTLDs / Subsequent Procedures (SubPro):**

Context: ICANN Board Resolution of 16 March 2023

- 1a. Status of the 38 “pending” SubPro Recommendations
- 1b. Status of the Closed Generics Dialogue Framework – move towards a consensus policy mechanism

### 2. **DNS Abuse Mitigation:**

Context: GNSO Council Small Team on DNS Abuse

- 2a. Targeted contractual amendments between ICANN – Contracted Parties
- 2b. Role of bulk registrations – scope for KYC practices

**Let's go!**

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**1. Next Round of New gTLDs  
(formerly Subsequent Procedures)**

# 1. ICANN Board Resolution, 16 March 2023

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- ICANN Board resolves during its Board Meeting at ICANN76:
  - To adopt the SubPro Outputs in Section A of its "Scorecard on Subsequent Procedures PDP" (Scorecard);
  - **Marking 38 Outputs in Section B of the Scorecard as "pending"**;
  - Noting **ongoing community discussions** relating to Topic 17: Applicant Support, **Topic 23: Closed Generics**, and Topic 25: Internationalized Domain Names (IDNs), and additional dependencies concerning specific Review Team Recommendations, the Name Collision Analysis Project Study 2 Report (NCAP2), and other items noted in Section C of the Scorecard.
  
- Understands delivery of the Implementation Plan no later than 1 August 2023 requires the satisfactory completion of the following four deliverables (the Deliverables) by the last day of the ICANN77 Public Meeting (15 June 2023):
  - **A plan and timeline as agreed upon by the ICANN Board and the GNSO Council for consideration and resolution of all Outputs contained in Section B of the Scorecard;**
  - A working methodology and Implementation Review Team (IRT) work plan and timeline as agreed upon by ICANN org and the GNSO Council;
  - **A GNSO Council project plan and timeline for policy work, or an alternate path, on how to handle closed generics for the next round of new gTLDs;** and
  - A project plan from the GNSO Internationalized Domain Names (IDNs) Expedited Policy Development Process (EPDP) Working Group (WG) identifying all charter questions that will impact the next Applicant Guidebook, along with considerations to ensure a consistent solution on IDN Variant TLDs with the ccPDP4 on IDN ccTLDs (in accordance with prior Board Resolution 2019.03.14.09), and a timeline by when the IDNs EPDP WG will deliver relevant recommendations to the GNSO Council.

# 1a. Status of the 38 “pending” SubPro Recs, 25 May

## (a) Provision of clarifying information to the Board

<u>SubPro Topic</u>	<u>Pending Recs</u>	<u>Synopsis - Board Concern</u>	<u>GNSO Reaction</u>	<u>ALAC Position?</u>
<b>3: Applications Assessed in Rounds</b>	3.1, 3.2, 3.5, 3.6,.3.7	Inflexibility of being tied to rounds	Clarification - possible dialogue w/ Board, IRT	<b>Agree with GNSO so far as no FCFS. FCFS must → PDP</b>
<b>19: Application Queuing</b>	19.3	Prescriptive batch size → inflexibility	Clarification – not meant to be prescriptive or batching limits	<b>Agree with GNSO – implement formula, not batch size – take up in IRT</b>
26. Security & Stability	26.9	Ability to prohibit emojis at the 3 <sup>rd</sup> Level	Clarification – rec only applies to any level in which RO distributes DNs	No comment.  (GNSO response likely agreeable to Board anyway)
<b>29: Name Collision</b>	29.1	Not concern, merely awaiting NCAP Study 2 Report	Clarification – no need for immediate action	<b>Agree with GNSO &amp; Board – wait for NCAP Study 2 Report</b>
<b>34: Community Apps</b>	34.12	Possibly required to publish CPE provide confidential info for public comment	Clarification – limits on confidential info	<b>Agree with GNSO &amp; Board – take up in IRT</b>
<b>35: Auctions</b>	35.3, 35.5	“Private Auctions” mentioned	Clarification – recs do not constitute policy wrt auctions	<b>Agree with GNSO &amp; Board, also support Board’s plan to engage external expertise to deal with all aspects of auctions</b>

# 1a. Status of the 38 “pending” SubPro Recs, 25 May

## (b) Determination that issue can be resolved during implementation

<u>SubPro Topic</u>	<u>Pending Recs</u>	<u>Synopsis - Board Concern</u>	<u>GNSO Reaction</u>	<u>ALAC Position?</u>
6: RSP Pre-Evaluation	6.8	Roles of IRT & ICANN org seem to be reversed	Clarification – ICANN org will work on costs	No comment
16: Application Submission Period	16.1	Application window period too prescriptive	Resolved	No comment
<b>17. Applicant Support</b>	17.2	Open-ended nature of potential payees and payments	Can be resolved in implementation	<b>Agree with GNSO – take up in IRT</b>
18. Terms & Condition	18.4	Ability for applicant to withdraw w/o clarity on “substantive” or “material” changes made to AGB/ Program could → gaming	Can be resolved in implementation	No comment – take up in IRT

# 1a. Status of the 38 “pending” SubPro Recs, 25 May

## (c) Explore starting a Bylaw change process

<u>SubPro Topic</u>	<u>Pending Recs</u>	<u>Synopsis - Board Concern</u>	<u>GNSO Reaction</u>	<u>ALAC Position?</u>
<b>9: RVCs/PICs</b>	9.1, 9.4, 9.8, 9.9, 9.10, 9.12, 9.13, 9.15	Uncertainty/risks in ICANN’s ability to enforce PICs/RVCs per mission/Bylaw sec 1.1 limitation. Bylaw change must succeed.	<ol style="list-style-type: none"> <li>1. Socialize the idea of a Bylaws change at ICANN77;</li> <li>2. Develop a document describing how this could be addressed through a Bylaws change;</li> <li>3. Describe what is in the PICs/RVCs that makes them enforceable.</li> </ol>	<p><b>Must be enforceable &amp; enforced.</b></p> <p><b>If Bylaws change needs to proceed, then must be completed before next round.</b></p> <p><b>Can start exploring if any objection to limited Bylaw amendment in principle.</b></p>
24: String Similarity	24.3, 24.5	Enforcing “intended use” of singular-plural through PICs may fall outside ICANN mission		
30: GAC Consensus Advice & GAC EW	30.7, 31.16	Use of RVCs to address GAC EW / Advice (or even other comments) may fall outside ICANN mission		
31: Objections	31.16, 31.17	Ability for applicant to withdraw w/o clarity on “substantive” or “material” changes made to AGB/ Program could → gaming		

# 1a. Status of the 38 “pending” SubPro Recs, 25 May

## (g) Other – Dialogue between the Council and Board

SubPro Topic	P/Recs	Synopsis - Board Concern	GNSO Reaction	ALAC Position?
9: RVCs/PICs	9.2	Waiver of Spec 11 3(a) & 3(b) for single registrant TLDs could → unforeseen harm on diff biz models	Spec 11 3(a) & 3(b) read with Spec 13 = no registrants to protect since “registered name holder” (i.e. the only registrant) is RO itself.	<b>Support Board on account of new info – not all single registrant ROs are equal – preference for no blanket waiver approach.</b>
18: Terms & Conditions	18.3	Covenant not to sue subject to challenge/ appeal mechanism → undue legal exposure (*32.)	Could become moot if resolve Topic 32 concerns.	No comment.
32: Limited Challenge / Appeal	32.1, 32.2, 32.10	Co-existence with Bylaw-driven Accountability Mechs, duplication, add unnecessary cost and delay	More dialogue – possible more IG	No comment.
18: Terms & Conditions	18.1	Does not want to unduly restrict ICANN’s discretion to reject an application in circumstances that fall outside the specific grounds set out in the recommendation.	More dialogue	No comment..
22: Registrant Protections	22.7	Exemption of COI = no EBERO funds – better to be case-by-case than blanket exemption (*9.2)	More dialogue – find a way to accommodate non blanket exemption	No comment.
30: GAC Consensus Advice & EW	30.4, 30.5, 30.6	Non-consensus GAC discomfort in removing “strong presumption for ICANN Board that application should not be approved”	Nothing to do except may be join Board – GAC conversation	No comment.



# 1b. Status of the Closed Generics Dialogue

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- ⦿ GNSO Council 25 May 2023 Meeting
  - The GNSO-GAC-ALAC Closed Generics Dialogue is expected to deliver a draft framework, if agreed, circa 31 May 2023.
  - Framework is meant to draw some boundaries on how to introduce closed generics in the next round which will be subject to an onward GNSO policy process to produce consensus policy – expected to take 18 months.
  - GNSO Council leadership has proposed that EPDP be the policy development process to take the framework forward – drew some apprehension.
  - Unable to shape interaction with GNSO Council until we learn more on the framework after its release.
  - However, I understand that the framework will likely include some reference to application questions, evaluation, post delegation - registry agreement aspects.
  - Until such time the framework is released for consideration by the ALAC ... perhaps the default ALAC position should remain as to defer introduction of closed generics until consensus policy is in place.

**2. DNS Abuse Mitigation  
(from GNSO Council's perspective  
based on work by  
Council's Small Team on DNS Abuse)**

# 2. GNSO Council DNS Abuse Mitigation roadmap

Feb 2022 Outreach	Key Responses	Key Takeaways
<b>To ACs, SG/Cs, DNSAI</b>	<b>From ALAC, SSAC, DNSAI, CPs</b>	
<p>Wrt policy development</p> <ol style="list-style-type: none"> <li>1. Specific problem(s) for addressing?</li> <li>2. Expected outcomes?</li> <li>3. Expectations for GNSO Council to undertake?</li> </ol>	<ul style="list-style-type: none"> <li>• ALAC – Investigate bulk registrations made with malicious intent – add friction to bulk registrations – adopt KYC, predictive algorithms</li> <li>• ALAC – How are CP obligations eg RA Spec 11 3(b) enforced? Transparency, standardization needed.</li> <li>• SSAC – SAC115: standardized reporting, escalation paths etc</li> <li>• DNSAI – run focussed PDP on malicious registrations</li> <li>• RySG – room for both contractual requirements and best practices within industry – min compliance goal – generally accepted practice (GAP) as prime candidates for inclusion as min compliance standards</li> <li>• RrSG – “Suggested Standards” document for compliance, suggestions for CC enforcement – “registrant rights” education</li> <li>• BC – PDP to compel uniform action on maliciously registered DNSs</li> </ul>	<p>Insufficient data – disc if issue exists – Letter to CPH, DNSAI, CC</p> <p>Letter to CPH</p> <p>DNSAI NetBeacon is good eg</p> <p>PDP premature</p> <p>To identify those GAPs – Letter to CPH</p> <p>Check on gaps identified by CC – Letter to CPH</p> <p>Maliciously registered vs compromised DNSs</p>
<b>To ICANN CC</b>	<b>From ICANN CC</b>	
<p>Wrt DNS Abuse</p> <ol style="list-style-type: none"> <li>1. What in RA &amp; RAA does CC enforce?</li> <li>2. How is enforcement undertaken?</li> <li>3. Any metrics for insight into complaints?</li> <li>4. Factors in reviewing complaint: mandatory vs discretionary – challenges?</li> <li>5. How to ensure effective remediation if CP does not comply?</li> </ol>	<p>RA</p> <ul style="list-style-type: none"> <li>• Spec 6 4.1 – accurate details of primary contact for queries (mandatory)</li> <li>• Spec 11 3(a) – RO-Ry contract must stipulate that Rr-registrant contract, registrant prohibited from engaging in certain activities (mandatory)</li> <li>• Spec 11 3(b) – RO to periodically conduct technical analysis to assess security threats – through audits (mandatory)</li> <li>• Spec 4-2 – zone files</li> </ul> <p>RAA</p> <ul style="list-style-type: none"> <li>• s 3.18 – Rr to take reasonable steps etc</li> <li>• s 3.7.8 – Rr to comply with Whois Accuracy Program Spec</li> </ul> <p>CC reporting portal</p>	<ol style="list-style-type: none"> <li>1. No challenges in utilizing existing tools provided by RA, RAA to enforce obligations</li> <li>2. If/when new obligations are imposed, then CC will enforce those</li> <li>3. RA Spec 11 3(a) – audited</li> <li>4. RA Spec 11 3(b) – audited, mostly compliant</li> <li>5. RAA does not give contractual authority to demand specific action by Rrs on DN subject to abuse report – is up to Rr’s own policies</li> </ol>

## 2. GNSO Council DNS Abuse Mitigation roadmap

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- ⦿ Feb 2022 outreach → 7 Oct 2022 Report to GNSO Council <sup>1</sup>
  - 3 categories of action:
    - Issues that may benefit from GNSO policy development
    - Issues that may benefit from education/communication/outreach
    - Issues that may benefit from ICANN org - Contracted Parties contractual negotiations
  - **Recommendations**
    - #1 Malicious Registrations – consider requesting the development of a Preliminary Issue Report on the topic of malicious registrations -> tightly scoped PDP
    - #2 Bulk Registrations – request RrSG and others to explore role that bulk registrations play in DNS Abuse & measures in place
    - #3 DNS Abuse Reporting – encourage continued discussion between CPH and reported to fine tune tools, initiatives for better & actionable reporting
    - #4 Action & Enforcement – letter to CPH for feedback on how to address potential gaps
  - **Action taken**
    - 1 letter to RySG and RrSG on gaps for contractual amendment
    - 2<sup>nd</sup> letter to RySG, RrSG, DNSAI and CC on Bulk Registrations

1- <https://gnsso.icann.org/sites/default/files/policy/2022/correspondence/dns-abuse-small-team-to-gnsso-council-07oct22-en.pdf>

# 2. GNSO Council DNS Abuse Mitigation roadmap <sup>2</sup>

+ Jan 2023 Outreach	Key Responses	Key Takeaways
To CPH – RySG & RrSG	From CPH - RySG & RrSG <sup>2</sup>	
<p><b>Targeted contractual amendments</b></p> <p>RySG – RA Spec 11 3(a)</p> <p>RrSG – RAA s 3.18.1</p>	<p>RySG on RA Spec 11 3(a)</p> <p>On “include a provision in their agreement with registrars,” - limited to inclusion in Ry-Rr Agreement - further consideration may need to be given to what RO are doing to ensure the text is indeed included in the Registration Agreement (i.e. Registries enforcing their own Registry-Registrar Agreements).</p> <ul style="list-style-type: none"> <li>• CPH do not believe there are any interpretation of enforceability gaps – obligations are audited by ICANN Contractual Compliance</li> <li>• The pass-through provisions extend beyond DNS Abuse and include website content abuse falling outside current effort by CPH to better address DNS Abuse</li> </ul>	<ol style="list-style-type: none"> <li>1. No enforceability gaps</li> <li>2. Maybe ROs need to check whether provision is included in Registration Agreements</li> </ol>
	<p><b>RrSG on RAA s 3.18.1</b></p> <p>On “Registrar shall take reasonable and prompt steps to investigate and respond appropriately to any reports of abuse”), it is unclear what “reasonable”, “prompt”, and “appropriately” mean, even though ICANN Compliance indicated that they enforce in the case of inaction. The ICANN Compliance response also indicated that “(t)he RAA does not require registrars to take any specific action on the domain names that are subject to abuse reports.” And that “(t)he RAA does not prescribe the specific consequences that registrars must impose on domain names that are subject to abuse reports though”. This interpretation may allow DNS abuse to remain unmitigated, depending upon the registrar’s specific domain name use and abuse policies.</p> <ul style="list-style-type: none"> <li>• Part of current ongoing contractual negotiations with ICANN</li> </ul>	<ol style="list-style-type: none"> <li>1. Wait for Targeted contractual amendments negotiations between ICANN – CPH</li> </ol>

2- <https://gns0.icann.org/sites/default/files/policy/2023/correspondence/bacon-to-ducos-et-al-13mar23-en.pdf>

# Resource: DNS Abuse provisions in RA and RAA

## Base Registry Agreement (RA)

- Spec 6 4.1 – **Abuse Contact.** RO 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.
- Spec 11 3(a) – RO will include a provision in its RRA that requires Rrs 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 laws, and providing (consistent with applicable law and any related procedures) consequences for such activities incl. suspension of the DN.
- Spec 11 3(b) – RO 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. RO will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. RO 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.

## Registry Accreditation Agreement (RAA)

- Sec 3.18.1 – Rr shall maintain an abuse contact to receive reports of abuse involving Registered Names sponsored by the Rr, including report of Illegal Activity. Rr shall publish an email address to receive such reports on, the home page of Rr's website (or in another standardized place that may be designated by ICANN from time to time). Rr shall take reasonable and prompt steps to investigate and respond appropriately to any reports of abuse.

## 2a. Targeted contractual amendments

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ICANN77 PW: DNS Abuse Contract Amendments Update, 30 May 2023

### Public Comment Proceedings on Amendments to the Base gTLD RA and RAA to Modify DNS Abuse Contract Obligations, 29 May – 13 Jul 2023

<https://www.icann.org/en/public-comment/proceeding/amendments-base-gtld-ra-raa-modify-dns-abuse-contract-obligations-29-05-2023>

- ⦿ To enhance obligations by requiring Rrs & ROs to promptly take reasonable and appropriate action to stop or otherwise disrupt DNS Abuse
- ⦿ Proposed amendments to strengthen existing provisions in RAA s 3.18 and RA Spec 6.4 by adding DNS Abuse mitigation and disruption obligations, including:
  - Requirements to ensure abuse contacts are readily accessible on the contracted party's webpage and to produce receipt confirmation for reporters upon receipt of abuse reports
  - Possibility for Rrs & ROs to use webforms instead of email as an abuse reporting mechanism
  - A definition of DNS Abuse for purposes of the Agreements
  - A new requirement to promptly take appropriate mitigation actions against domains for which the CP has actionable evidence demonstrating that the domains are being used for DNS Abuse
  - Permits CPs to exercise reasonable discretion in selecting and implementing the appropriate mitigation actions depending on the circumstances of each case
  - Recognition of the different roles of the Rr & RO
  - Focus on the target outcome of stopping or disrupting the use of gTLD DNs for DNS Abuse
- ⦿ Amend to RA Spec 11.3(b) to replace “security threats” with “DNS Abuse” – to include Spam as a delivery mechanism for other forms of DNS Abuse to be assessed and reported on.
- ⦿ **ICANN Advisory – check for language around “appropriate”, “reasonable”, “timely”, “compliance”**

# 2b. Bulk Registrations

+ Jan 2023 Outreach	Key Responses	Key Takeaways <sup>7</sup>
To 4 parties	From ICANN CC <sup>3</sup> , DNSAI <sup>4</sup> , RySG <sup>5</sup> , RrSG <sup>6</sup>	
<p><b>Bulk registrations</b></p> <ol style="list-style-type: none"> <li>1. Role in DNS Abuse</li> <li>2. What further work to address potential issues?</li> <li>3. What measures are in place wrt bulk registrations (threshold, restrictions, checks etc)? What's been effective? Can encourage voluntary adoption or not?</li> </ol>	<ul style="list-style-type: none"> <li>• CC – no contractual obligation wrt registering DNS in bulk, so don't track – issues would typically be the same as for single DNS</li> <li>• DNSAI - does not currently have any statistics or evidence on bulk registrations – could conduct some exploratory research on their existing data to see if can identify bulk registrations – can do the same if others have data.</li> <li>• DNSAI - no consistent definition of bulk registrations - some work on Domain Generating Algorithms (DGAs) but small subset of what could be “bulk registrations” - different Rrs may handle differently – registration flow, anti-fraud tools in processing payments, transactional flagging</li> <li>• RySG – hard to say as no definition of “bulk registrations”</li> <li>• RySG – also points to work done on DGAs but use of DGAs rarely carried out in bulk – because cannot pin down, reliance on third party expertise (eg. Conficker, Avalanche etc), existing work by RySG – GAC PSWG</li> <li>• RrSG – “Bulk registration” not defined or definable – better ways to combat malicious registrations - fraudulent banking transactions a significant flag, IP address tracking, KYC/personal relationship with customers – apply regardless of volume</li> <li>• RrSG - restricting domain purchases or adopting policies against “bulk registrations” may not be effective, and may harm diversity of business models</li> </ul>	<ul style="list-style-type: none"> <li>• The general responses received :             <ul style="list-style-type: none"> <li>○ Complaints from single or multiple registrations are handled uniformly, without clarity on what might constitute bulk registrations warranting targeted reactions.</li> <li>○ The lack of a clear definition did not elicit a clear response.</li> <li>○ Other KYC tools deemed more efficient in detecting potential abuse, and should warrant more attention.</li> </ul> </li> <li>• ICANN's recently started Inferential Analysis of Maliciously Registered Domains (INFERMAL) project - willingness from org. to look into this matter and provide us with better statistics and intelligence.</li> <li>• Preliminary conclusion - does not fall within realm of Consensus Policy right now</li> </ul>

3- <https://gnso.icann.org/sites/default/files/policy/2023/correspondence/hedlund-to-ducos-22feb23-en.pdf>

4- <https://gnso.icann.org/sites/default/files/policy/2023/correspondence/bunton-to-ducos-27feb23-en.pdf>

5- <https://gnso.icann.org/sites/default/files/policy/2023/correspondence/woods-to-ducos-03mar23-en.pdf>

6- <https://gnso.icann.org/sites/default/files/policy/2023/correspondence/heineman-to-ducos-13mar23-en.pdf>

7- DNS Abuse Small Team Finding Bulk Registration Findings – 15 May 2023



## 2. DNS Abuse Mitigation

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- What do we want to relay to GNSO Council regarding:
  - **2a. Status of the Targeted Contractual Amendment Negotiations?**
    - (1) Go through the relevant public comment proceeding?
    - or
    - (2) More – what?
  - **2b. Stance on Bulk Registrations?**
    - (1) Press GNSO with “bulk registration” definition from <https://www.interisle.net/criminaldomainabuse.html> – to extract this?
    - or
    - (2) Reframe “bulk registrations” – how?
    - or
    - (3) a) Express reservation at GNSO Council’s (current) stance
      - + b) Accept that reliance better directed at ICANN org-funded Inferential Analysis of Maliciously Registered Domains (**INFERMAL**) Project which will collect and analyze a comprehensive list of domain name registration policies pertinent to would-be attackers – incl. registration features such as an API registration panel, an ability to register in bulk, accepted payment methods (credit card, Bitcoin, or WebMoney), and retail pricing, among many other potential registry features <https://www.icann.org/en/blogs/details/new-icann-project-explores-the-drivers-of-malicious-domain-name-registrations-25-04-2023-en>
      - + c) Wait for some INFERMAL data/conclusion then re-engage with GNSO Council?

**Thank you for your  
participation & input to  
the ALAC for the GNSO**