

Via email: comments-ssr2-final-report-28jan21@icann.org

April 8, 2021

Mr. Maarten Botterman
Chair of the Board
ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: **Comment by Namecheap, Inc. regarding the Second Security, Stability, and Resiliency (SSR2) Review Team Final Report**

Dear Chairperson Botterman and Members of the ICANN Board,

Namecheap, Inc. (“Namecheap”) thanks ICANN for the opportunity to provide a comment on the [Second Security, Stability, and Resiliency \(SSR2\) Review Team Final Report](#) (“SSR2 Final Report”). ICANN reviews, which are provided for in ICANN’s by-laws, are an integral component of ICANN’s accountability mechanisms and normally recommendations from reviews should serve as a basis for action by the ICANN Board, the ICANN Org, and the ICANN Community. Reviews are significant undertakings, requiring substantial time commitments from the community volunteers and ICANN Org staff, and Namecheap appreciates these efforts. The SSR2 Final Report builds on the efforts of the [Final Report of the Security, Stability and Resiliency \(SSR\) of the DNS Review Team](#) (“SSR1 Final Report”). The SSR1 Final Report contained recommendations for the ICANN Org itself, additional reporting and information sharing, and collaborative methods to improve ICANN community structures.

Except to the extent that the SSR2 Final Report recommends that ICANN adopt any outstanding recommendations from the SSR1 Final Report, the SSR2 Final Report departs completely from the approach and structure of the SSR1 Final Report. The SSR2 Final Report ignores the bottom-up multistakeholder approach that forms the basic structure of ICANN, fails to incorporate public comments (especially those from contracted parties), and most troubling, attempts to modify the registrar accreditation agreement (RAA) and the registry agreement (RA) directly without the participation of the registrars or registries. Most of the recommendations in the SSR2 Final Report are biased and flawed, and should not be adopted by the ICANN Board.

Namecheap notes that the contents of the SSR2 Final Report raised significant concerns that the Registrar Stakeholder Group (RrSG) and the gTLD Registries Stakeholder Group (RySG) sent a joint letter to the ICANN Board to immediately highlight concerns with the report. As the [letter](#) summarizes:

“(1) the recommendations would violate the terms of both the Registrar Accreditation Agreement (RAA) and the Registry Agreement (RA);
(2) the recommendations would undermine both Community discussions in progress as well as the multistakeholder model; and
(3) the SSR2 Review Team ignored fundamental and crucial public comments.”

Namecheap supports the joint RrSG/RySG letter to the ICANN Board, and incorporates it by reference in this comment.

Additionally, Namecheap would like to acknowledge the efforts of the RrSG in drafting comments to the SSR2 Final Report, and the diverse participants that contributed to the RrSG efforts. Namecheap supports the RrSG comment, and incorporates it by reference in this comment.

Namecheap would like to highlight some concerns to the ICANN Board regarding the SSR2 Final Report.

I. Recommendations Do Not Comply with RAA Negotiation Process

Namecheap does not support any of the components of the SSR2 Final Report that contemplate any modification of the RAA (including but not limited to Recommendations 6 and 8), and urges the ICANN Board to completely reject any of these recommendations. According to the RAA (which is binding on ICANN and each accredited registrar), the sole process to negotiate and modify the RAA is detailed in Section 7.4 of the RAA. It is a process between ICANN Org and the Registrar Stakeholder Group (RrSG), and can only be initiated by those parties. Those are the only parties that participate in the negotiations. Although any draft revisions are subject to public comment, the RrSG is under no obligation to accept any public comment.

The RAA negotiation process can be time consuming, even for simple changes. For example, ICANN announced in [October 2019](#) that it would begin negotiating with registrars and registries to update their agreements to replace the whois service with RDAP. Those negotiations are still ongoing, and at this point, there is no estimated completion date. Additionally, many of the proposed changes to the RAA are not technically, commercially, or legally feasible. The SSR2 Final Report also does not specify how these changes will produce the intended results. Ignoring the RAA negotiation requirements, it is concerning that a few ICANN community members would propose substantial changes to the RAA- while explicitly prohibiting the registrars from participating in negotiations that would alter a mandatory ICANN contract. This is a concern (and the reason why registrars must participate in the RAA negotiation process) because a potential result for noncompliance with an impossible obligation is RAA termination.

II. Lack of Community Participation or Consideration

Namecheap reviewed the participants of the [SSR2 Review Team](#), and while there was some participation from certain ICANN community groups, not all SOs/ACs were represented in the team that drafted the SSR2 Final Report. There were no representatives from the RrSG, the RySG, the Internet Service Providers and Connectivity Providers Constituency (ISPCP), and the

Not-for-Profit Operational Concerns Constituency (NPOC). Although this fact alone is not fatal for an ICANN review (as volunteer fatigue and limited bandwidth is a longstanding ICANN community concern), when certain groups are not represented, the review team should take substantial steps to ensure that the needs and interests of the absent groups are represented in the final recommendations. This should be a special consideration for a review team that makes recommendations that will have a significant impact on those constituencies. This should not be a surprise to the SSR2 Review Team, as some constituencies (including the [RrSG](#) and the [RySG](#)), provided comments to the [SSR2 Draft Report](#). These comments from these constituencies were strongly against, or completely disagreed with, some of the recommendations (based largely in part upon the RAA or RA). It appears that most (if not all) of this feedback was completely ignored, and in fact, it appears that the recommendations in the SSR2 Final Report are even stronger than in the SSR2 Draft Report- despite [Appendix H](#) repeatedly indicating that the feedback was incorporated into the SSR2 Final Report. In light of the biased participation and complete disregard of public feedback, Namecheap strongly cautions the ICANN Board that accepting the SSR2 Final Report will set a dangerous precedent of allowing minority groups to disregard and overrule other ICANN community members.

III. Many Recommendations are Contrary to ICANN’s Multistakeholder Model

Namecheap is concerned that the recommendations in the SSR2 Final Report appear to be a method of subverting the ICANN multistakeholder model- rather than focusing on ICANN’s status and progress in the security and stability of the Internet’s unique identifiers (as Specified in Section 4.6(c) of the ICANN By-Laws). Many of the recommendations are similar to repeated efforts by the groups on the SSR2 Review team to change ICANN policies- through government lobbying, litigation, or PDPs- that have not been successful. The ICANN Board should reject this attempt to subvert the ICANN multistakeholder model process- which if allowed would jeopardize the legitimacy of the very basis of ICANN. Instead of generating reports that are deeply flawed and lack support from constituencies that ostensibly will be bound by the recommendations, the participants in this review team should focus their efforts on finding consensus with the diverse participants of ICANN.

IV. Recommendations Already Performed by ICANN Org

A number of the recommendations in the SSR2 Final Report address items or functions that ICANN org already provides- and in some cases is already dedicating significant resources toward. Specifically, Recommendations 2, 3, and 4.3 already exist within ICANN. John Crain has the title of Chief Security, Stability & Resiliency Officer. Mr. Crain (and his team) are part of the Office of the Chief Technology Officer (OCTO)- which has approximately twenty members. Mr. Crain and OCTO already have a transparent budget, conduct (and publish) extensive research, and participate in many ICANN and industry forums. The OCTO team has an extensive list of publications at <https://www.icann.org/octo>. It is not clear from the SSR2 Final Report whether the Review Team is aware of these ICANN activities, or how the Review Team finds these significant and beneficial activities to be insufficient.

V. Cost

Finally, the recommendations in the SSR2 Final Report appear to be made without any consideration of cost to ICANN. At the very least, the abuse incentives contained in Recommendation 14 are not presented in a revenue-neutral manner- ICANN is left to determine how to pay for the recommendation. Other recommendations (e.g. Recommendations 3 and 10) propose a number of ICANN initiatives (reports, participation in conferences, duplicating peer-reviewed research, etc.) that will result in significant costs- without contemplating the impact on the limited ICANN budget.

Recommendation 13 proposes a central abuse complaint processing system for the entire Internet. Without considering the likelihood of abuse of such as system (registrars and registries are already inundated with spurious and unsupported abuse complaints), the proposed system contemplates integration with ccTLDs (which are outside of ICANN's mandate), and fail to include an integral component of the Internet ecosystem that is best positioned to address abuse: hosting providers. The biggest concern about this system is the likely cost. ICANN Org recently estimated that the cost to create the Standardized System for Access/Disclosure (SSAD) as recommended by EPDP [Phase 2](#) is approximately \$9 million. The SSAD is projected to cost an additional \$9 million annually to operate (which should be paid for by the SSAD users in a cost recovery manner). It is quite possible that the proposed abuse complaint system will cost more than the already substantial SSAD estimates- and the SSR2 Final Report fails to contemplate the source of funds for these initiatives. As the vast majority of ICANN's budget is ultimately paid for by domain name registrants, Namecheap recommends that the ICANN Board reject any of the recommendations that will result in significant costs to ICANN.

VI. Conclusion

Namecheap acknowledges the significant efforts of the SSR2 Review Team, however in light of the concerns raised by Namecheap, the RrSG, and the RySG, Namecheap requests that the ICANN Board not adopt the recommendations contained in this report for the reasons provided by the respective groups.

Sincerely,

Owen Smigelski
Head of ICANN Compliance & Relations
Namecheap, Inc.