ARTICLE 19 response to the ICANN Second Security, Stability, and Resiliency (SSR2) Review Team Final Report

Introduction

ARTICLE 19 welcomes the efforts of the Internet Corporation for Assigned Names and Numbers (ICANN) to engage in a multi-stakeholder process by holding this Public Comment Consultation on the ICANN Second Security, Stability, and Resiliency (SSR2) Review Team Final Report. [1]

This consultation is an important opportunity, as the rules that ICANN will apply and actions it will take will impact the human rights of internet users. We thus appreciate the opportunity to provide ICANN with our position on the ICANN Second Security, Stability, and Resiliency (SSR2) Review Team Final Report and we look forward to the discussions that will follow.
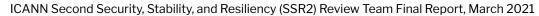
This statement is made on our own behalf. We also endorse comments by the Non Commercial Stakeholder Group (NCSG) and those of the At-Large Advisory Committee (ALAC).

About ARTICLE 19

ARTICLE 19 is an international human rights organisation that works to protect and promote free expression, which includes the right to speak, freedom of the press, and the right to access information. With regional programmes in Africa, Asia, Europe, Latin America, and the Middle East and North Africa, we champion freedom of expression at the national, regional, and international levels. The work of ARTICLE 19's Digital Programme focuses on the nexus of human rights, Internet infrastructure, and Internet governance.

At ICANN, we engage through the ICANN Empowered Community as members of the Generic Names Supporting Organization (GNSO) under the Non-Commercial Users Constituency (NCUC) and as members of the At-Large Advisory Committee (ALAC) directly as part of the European Regional At-Large Organization (EURALO). We work within the ICANN community with the main purpose of raising awareness of how the Domain Name System (DNS) affects human rights. This aim would ensure

---

[1] ICANN Second Security, Stability, and Resiliency (SSR2) Review Team Final Report <https://www.icann.org/public-comments/ssr2-final-report-2021-01-28-en> accessed 19 March 2021

that Section 27.2 of the ICANN Bylaws (on Human Rights) and other Bylaws with an impact on human rights are implemented in full and put the user at the centre of policy development processes.

Summary

On January 28 2021, ICANN published the ICANN Second Security, Stability, and Resiliency (SSR2) Review Team Final Report, seeking input from the community. In March 2021, ARTICLE 19 reviewed the document that is subject to the public consultation.

Our analysis shows that the ICANN Second Security, Stability, and Resiliency (SSR2) Review Team Final Report contains several positive and commendable provisions, including inclusion of recommendations encouraging transparency, accountability and privacy.

However, it does not fully address the human rights implications of the recommendations, which propose mitigating DNS abuse and compliance enforcement of the same but do not provide clear guidance on their scope and limitations which may enable the extension of ICANN's remit and scope beyond infrastructure to include content moderation.

ARTICLE 19 therefore urges ICANN to consider the recommendations below, which would help align the ICANN Second Security, Stability, and Resiliency (SSR2) Review Team Final Report more closely with international law and best practice.

SSR2 Recommendation 8: Enable and Demonstrate Representation of Public Interest in Negotiations with Contracted Parties

We welcome the work of the Working Group towards this recommendation. We note that the recommendation proposes that "...*ICANN org should commission a negotiating team that includes abuse and security experts not affiliated with or paid by contracted parties to represent the interests of non-contracted entities and work with ICANN org to renegotiate contracted party contracts in good faith, with public transparency, and with the objective of improving the SSR of the DNS for end-users, businesses, and governments....*"

For this reason, the recommendation should be revised to ensure that the process of selecting the negotiating team should be a multi-stakeholder process, and that the composition of the negotiating team must comprise various stakeholders from the Empowered Community. Specifically, the recommendation should create open

consultations and opportunities for stakeholders to submit public comments when renegotiating with contracted parties.

SSR2 Recommendation 9: Monitor and Enforce Compliance

We recognize that malicious actors use the DNS as a tool to perpetrate criminal and unlawful activities. However, we strongly oppose the proposition to develop and deploy monitoring systems without strong due process procedures in place, including the creation of a clear timeline to take action against the domain name after providing the registrant with opportunities to explain their action. We also oppose any attempts to include content takedowns without due process, as mentioned above.
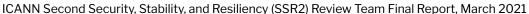
The right to due process is provided under article 14 of the International Convention on Civil and Political RIghts (ICCPR) which states that, "...*All persons shall be equal before the courts and tribunals...everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law..*"
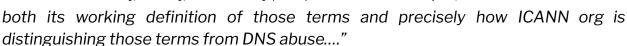
It is important that this right is observed in the domain name system as it allows a potential domain name owner (registrant) to understand why their registration for a name might be rejected, why their domain might be suspended, and why the domain name might be taken down by a registry or a registrar. This process provides safeguards against over-censorship of lawful content as ICANN and registries or registrars will not unilaterally determine prevent free speech without public oversight.

Therefore recommendation 9 should be redrafted to make it explicit that due process would be followed and that any data collected during the monitoring and compliance enforcement process would not be used without the registrants explicit and informed consent that follows due process and subject to strict retention limits.

SSR2 Recommendation 10: Provide Clarity on Definitions of Abuse-related Terms

It is commendable that the working group recommends that, "...*ICANN org should post a web page that includes their working definition of DNS abuse, i.e., what it uses for projects, documents, and contracts. The definition should explicitly note what types of security threats ICANN org currently considers within its remit to address through contractual and compliance mechanisms, as well as those ICANN org understands to be outside its remit. If ICANN org uses other similar terminology—e.g., security threat, malicious conduct—ICANN org should include*

both its working definition of those terms and precisely how ICANN org is distinguishing those terms from DNS abuse…."

However we urge that the recommendation should be redrafted to ensure that the process proposed in the recommendation for coming up with a working definition of DNS abuse is only carried out after engaging in a multi-stakeholder process such as public comments or consultations that considers all positions on DNS abuse from across the ICANN Empowered Community. This responsibility should not be left only to the section of stakeholders listed under section 10.2 and should also include internet end user communities, "*…from consumer protection, operational cybersecurity, academic or independent cybersecurity research, law enforcement, and e-commerce…"*

SSR2 Recommendation 12: Overhaul DNS Abuse Analysis and Reporting Efforts to Enable Transparency and Independent Review

While we welcome the recommendations, similar to the above comments under recommendation 10, we caution that any process of dealing with DNS abuse should be done through a public consultation process and should not expand ICANN's mandate beyond infrastructure to include content regulation.

SSR2 Recommendation 13: Increase Transparency and Accountability of Abuse Complaint Reporting

We welcome the recommendation, but recommend reviewing the data collection process to ensure that only the necessary and minimum available data (excluding personally identifiable information) is collected prior to increasing transparency and accountability of this data. Additionally we would recommend redrafting the recommendation to ensure that once the data collection that this data in the portal is accessible to academic and security researchers. This would ensure that independent researchers have an opportunity to monitor ICANN org's enforcement of policies and provide additional input on how this is more closely aligned with international law and best practice.

SSR2 Recommendation 17: Measuring Name Collisions

While we welcome the recommendation, we urge that the section is redrafted so that it is not in contradiction with the recommendations outlined under the GNSO New Subsequent Procedures Draft Final Report. We specifically note that the recommendation heavily relies on the Name Collision Analysis Project (NCAP) Studies I without reference to the rest of the ongoing work carried out by the NCAP studies group including NCAP Studies II and III. In this regard, we would like to

reiterate our recommendations submitted to the GNSO New Subsequent Procedures Working Group in September 2020 (comments which are still applicable in the current March 2021 situation), where we stated that, "...*We welcome the work of the Working Group regarding this topic and support all the affirmations and recommendations as written, especially on the use of the New gTLD Collision Occurrence Management framework. At this time, we do not support the replacement of this framework by a new Board approved framework that may result from the Name Collision Analysis Project (NCAP) Studies I, II and III. Any proposal for a new mitigation framework would be premature given the work of the NCAP studies group is yet to be completed....*". We would thus like to recommend that recommendation 17 is revised to note that measuring name collisions should be carried out under the ongoing framework pending full completion of the work carried out by the NCAP studies group.

Conclusion

ARTICLE 19 is grateful for the opportunity to engage with ICANN in this process, in light of the five objectives under ICANN's Strategic Plan for Fiscal Years 2021-2025.

We look forward to continued collaboration to strengthen human rights considerations in the Domain Name System and particularly in ICANN's policies and procedures. We welcome further engagement opportunities and avail ourselves in case of any questions or concerns.

If you would like to discuss this analysis further, please contact Ephraim Percy Kenyanito, Senior Digital Program Officer, at ephraim@article19.org. Additionally, if you have a matter you would like to bring to the attention of the ARTICLE 19 Digital Programme, you can contact us by e-mail at digital@article19.org.