



**Comment on Competition,
Consumer Trust, and
Consumer Choice Review
Team (CCT-RT) Accepted
Recommendations – Plan for
Implementation and Next
Steps**

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Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

Competition, Consumer Trust and Consumer Choice Review Team Accepted Recommendations -- Plan for Implementation and Next Steps¹

Thank you for the opportunity to comment in this important matter before the ICANN community. The BC once again thanks the Competition and Consumer Trust review team (CCT-RT) for its thorough work in reviewing the impact of the New gTLD Program ("Program") on consumer choice, competition, and consumer trust in the domain name marketplace.

This review represents one of the few community-based accountability mechanisms flowing from the IANA transition that are included in the ICANN Bylaws. In that regard, the BC sincerely hopes the ICANN Board will act expeditiously on adoption of the remaining review team recommendations, as many are absent from the Plan for Implementation.

BC Comment

From the CCT-RT report it is clear that new gTLD safeguards alone did not prevent DNS abuse and have consequently failed to meet their intended goal to prevent the abuse phenomenon from spreading to new gTLDs. In particular, the CCT-RT was clearly concerned by the high levels of DNS abuse concentrated in a relatively small number of registries and registrars and geographic regions.

Recommendations 14 to 18 were designed to address this, and in addition address the means available today to prevent and mitigate DNS abuse. The review team proposed new incentives and tools to combat abuse designed to encourage and incentivize proactive abuse measures as per Recommendation 14; introduce measures to prevent technical DNS Security Abuse as per Recommendation 15; and ensure that data collection is ongoing and acted upon as per Recommendation 16. In addition, a further mechanism was set out (a dispute resolution process -- the DADRP) for circumstances where, despite Recommendations 14, 15, and 16, registry operators and/or registrars do not effectively address DNS abuse within the domains they offer.

Recommendation 15 in particular is a prerequisite to ICANN addressing systemic DNS Security Abuse in the baseline contract for any future new gTLDs. As per the CCT-RT, "Such language should impose upon registries and registrars, and, through downstream contract requirements their affiliated entities such as resellers, a duty to prevent wide-scale DNS Security Abuse and implement specific measures to reduce

¹ See ICANN public comment page at <https://www.icann.org/public-comments/cct-rt-implementation-plan-2019-09-11-en>

malicious conduct whereby ICANN may suspend registrars and registry operators found to be associated with unabated, abnormal and extremely high rates of DNS Security Abuse. It is important for ICANN Org to gather relevant data, conduct analysis, and act on actionable information."

Plan for Implementation: Deliverables and Milestones

The BC reviewed ICANN Org's outlines regarding identified deliverables, milestones for implementation activity, and measures of success, and finds them to be satisfactory. The BC applauds staff's ambitious yet realistic timelines and encourages implementation work to commence as soon as practical.

BC Position Regarding Reviews of the Previous gTLD Expansion

The BC reminds ICANN that, since this comment concerns a formal review, our position regarding reviews of previous gTLD expansion holds from [our 10 September 2019 comment](#), which read, in part:

Before opening the next round, all previously committed reviews of the prior round should be completed, and recommendations from those reviews should be approved by the ICANN Board. While some of these recommendations may be implemented after the next round opens, the timeline must be such that recommendations are implemented before the domain delegation phase.

The BC reiterates its position above.

Recommendation 1

- It should be underlined that the review team's work was hampered by insufficient data on market trends and the success of policy recommendations. Therefore, accepting Recommendation 1 is a great initiative and could be helpful for future CCT review teams, given that it seeks to establish a data functions model to facilitate and promote ongoing data collection.
- However, ICANN has decided to discuss this recommendation independently from other specific data collection recommendations.
- The BC stresses that such a recommendation cannot be implemented on its own so as to properly assess the extent to which the introduction of new gTLDs has promoted competition, consumer trust and consumer choice in the domain name system, because Recommendation 1:
 - is a general framework recommendation that was meant to be read in light of the specific data collection recommendations as the data collection's model true potential, and the CCT-RT's mission can only be achieved if there is the required data readily available for analysis. Recommendation 1 is futile and not fully useful without the implementation of active collection of additional data;
 - facilitates the collection of ongoing data, though the CCT review team repeated on numerous occasions that the most significant limitations they faced was the almost total lack of information and data in some areas. This therefore calls for:

- the specific collection of additional data called for by recommendations (2, 3, 4, 5, 7, 23, 24, 26) and;
- additional means to collect data such as:
 - partnering with mechanisms and entities involved with the collection of TLD data (as called for by Recommendations 6) and;
 - conducting periodic surveys with registrants that gather objective and subjective information with a goal of creating concrete and actionable information (as called for by Recommendation 8)
 - In its analysis, the team found that the surveys that did exist did not define the terms sufficiently and contained very few questions. Therefore, it would be imperative that Recommendation 8 be read in line with Recommendation 11, which recommends partnering with survey experts to create new and review past surveys.
- ICANN itself appreciates that it is still "early innings" and the full effects of the new gTLD Program are unlikely to be felt for some time. It therefore seems to us crucial that ICANN starts implementing the collection, on an ongoing basis, of additional data now, not only for the sake of future CCT review teams and their ability to carry out future analysis effectively, but also ahead of the future introduction of new gTLDs.

Recommendation 21

The BC particularly wants to comment on Recommendation 21, regarding the subject of DNS Abuse. As a further reminder, the BC said in [its 26 November 2018 comment](#):

We support the continued exploration of the impact of abuse and safeguards to curb abuse on the new gTLD program including through contractual negotiations with registries and registrars, improved public reporting through DAAR or other initiatives, enhanced user education, and the use of incentives, as described above.

We particularly support the proposed approach to address contracted parties whose rates of abuse are found to dramatically exceed the normal range. As recommended in our prior comments, contracted parties whose abuse rates were sufficiently high to suggest that they were complicit in the abuse being carried out could “should in the first instance be required to a) explain to ICANN Compliance why this is, b) commit to clean up that abuse within a certain time period, and / or adopt stricter registration policies within a certain time period.” The CCT’s proposal to set specific thresholds to identify abusive TLDs and launch inquiries should allow ICANN Compliance to take meaningful action against registry operators that are unwilling or unable to address abuse within their TLD.

The BC underlines this input as well. As [the Governmental Advisory Committee \(GAC\) recently said about the importance of addressing DNS abuse](#), “Protecting the public from security threats and DNS

Abuse is an important public policy issue.” The BC concurs, and urges the community to take a proactive footing toward combating this increasing problem.

Increased transparency around complaints is also important for helping the community better understand the nature and extent of the problems caused by DNS abuse. We therefore welcome the move to largely implement Recommendation 21, and would like ICANN Org to explain what, if any, obstacles it perceives to fulfilling part (2) of the recommendation (to publish the TLD of the domains being complained about).

DNS abuse, of course, has not gone without community notice as [the issue of DNS abuse has become more acute](#). ICANN Org facilitated at least three discussions on abuse in 2019, and there is a major cross-community discussion scheduled for ICANN66 in Montreal. The BC looks forward to contributing to that discussion, and to the assertive effort necessary to implement CCT-RT Recommendation 21.

Further to Recommendations 17 and 21

- Both these recommendations were accepted because they were considered by the Board as already consistent with some policies or already part of other processes. More specifically:
 - Recommendation 17 is already consistent with current policy requirements and no further implementation work is planned by ICANN org at this time; and
 - some of the items within Recommendation 21 are already part of ICANN Contractual Compliance Department’s reporting process.
 - However, item 2 of Recommendation 21 ("the gTLD that is target of the abuse"), which is not already part of ICANN's Contractual Compliance department's reporting process, has not been implemented. As stated by the Board, this is because (1) Compliance has not published domain names or TLDs specifically in Compliance reports in the past and (2) "this would be similar to publication of Domain Abuse Activity Reporting (DAAR) data by TLD".
 - The Board thus directed ICANN org to investigate potential negative impacts of implementing this item on enforcement of compliance and decreed that more discussion and alignment within the org and/or community is required on how to approach publishing such information.
 - It seems to the BC that the issue thus lies not with the content being published but with the fact that it is already published by the DAAR.
- Moreover, both Recommendation 17 and Recommendation 21 figure in the "accepted recommendations" category.
 - However, when it comes to Recommendation 17, the Board states that "the CCT-RT addressed this recommendation to a number of community groups. The Board notes that to the extent these groups may produce policy outcomes that impact this work, those will be taken into account when appropriate". Therefore, our understanding is that the accepted Recommendation 17 is in fact "pending" or "passed through to the noted parts of the community".

- Also, in relation to the Recommendation 21 and its only element which is not already part of ICANN Contractual Compliance Department's reporting process (item 2), the Board states that it "requires further discussion within ICANN org as it requests to publish the Top-Level Domain (TLD) of the domains being complained about." Therefore, the accepted Recommendation 21 is in fact also "pending" or "passed through to the noted parts of the community".

Recommendations 14,15,16,18, 20

- The BC has noted section 4 Dependencies of the plan for implementation and references to DNS Abuse and to a need to reach a common community understanding of DNS Abuse. As such, a number of recommendations have been put in a pending state. The BC believes these recommendations should not be in a pending state, subject to the open-ended requirement that the community first create a universal definition for "abuse".
- As stated in CCT-RT report, in the body and in footnotes, the community has already defined the specific types of abuse relevant to the safeguards put in place as part of the new gTLD program.
- Making these recommendations "pending" inadvertently (though perhaps intentionally) conflates the CCT-RT mandate with broader policy debates in the community. This should not be the case since the CCT-RT was tasked with analyzing safeguards put in place as part of the new gTLD program to mitigate issues identified by the community with the expansion of the DNS. DNS abuse was one such issue. The CCT-RT consequently used an operational definition of "DNS Security Abuse" based upon the issues identified by community prior to the DNS expansion. In addition, the CCT-RT considered definitions developed in community documents over the past decade, and which have ultimately been enshrined in safeguards, including ICANN contracts. Accordingly, the CCT-RT analysis, and specifically its commissioned research, was based upon this definition. Consequently, there is no reason why CCT-RT recommendations may not be adopted forthwith using the consensus-based, discrete definition of DNS Security Abuse related to the new gTLD program and within the CCT-RT's mandate. Defining abuse should not be a "dependency" within the Board's adoptions of the resolutions.
- The research commissioned by the CCT-RT identified extremely high rates of abuse associated with specific registries and registrars as well as registration features, such as bulk registrations, which appear to enable abuse. These issues need to be addressed now, not pushed down the pipeline pending discussions as to what exactly "abuse" means.
- Consequently, the CCT-RT recommendations may be adopted now with the consensus-based, discrete definition of DNS Security Abuse related to the new gTLD program and within the CCT-RT mandate. Defining abuse should not be a "dependency" for the Board's adoptions of the resolutions.
- As a general note, we are concerned that the passing through and the pending recommendations are being or will be ignored, as no specific timeline was established.

- In addition, it is unacceptable for the Board to press ahead with further introductions of new gTLDs without having resolved these concerns first.
- Members of the community spent over two years working to provide a report which was a consensus report, only to find the ICANN Board reluctant to accept the recommendations and to designate certain recommendations as “reported for later.” The BC believes this is unacceptable and sets a worrying precedent.

Recommendation 22

- Consistent with the BC principles to promote end-user confidence in an internet that is technically stable, secure and reliable; the BC supports this recommendation. The collection of health and financial information is required in many circumstances for the purchase of certain products via the internet. Such data may be required for regulatory compliance but must be maintained to ensure privacy and confidentiality of personal records and contact information.
- When the engagement of relevant stakeholders for Recommendation 22 is undertaken, it is imperative to identify a full range of registrants collecting sensitive health and financial data, which data is being collected, how it is necessary for delivery of services, and subsequently to determine how it can be protected.

To accomplish this, ‘relevant stakeholders’ must include multiple participants within any sector as business models and data requirements may vary and metrics for compliance need to address such variations.

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This comment was drafted by Mason Cole, with edits by Tim Smith, Margie Milam, Ben Wallis, and Mark Wilson.

It was approved in accord with the BC Charter.