GNSO Issues Report on Registration Abuse Policies[1]

STATUS OF THIS DOCUMENT

This is the Issues Report on Registration Abuse Policies requested by the GNSO Council.

SUMMARY

This report is submitted to the GNSO Council in response to a request received from the Council pursuant to a Motion proposed and carried during the Council teleconference meeting on 25 September 2008.

[1] Requested by the GNSO Council in its Motion proposing an Issues Report on Aspects of Registry-Registrar Agreements

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1 Executive Summary

1.1 Background

- On 25 September 2008, the GNSO Council resolved "to request an issues report from ICANN Staff with respect to the following:
  1. To identify and describe the various provisions in existing and previous gTLD registry and registry-registrar agreements which relate to contracting parties' ability to take action in response to abuse.
  2. To identify and describe various provisions in a representative sampling of gTLD registration agreements which relate to contracting parties' and/or registrants rights and obligations with respect to abuse.
  3. To identify and describe any previous discussions in ICANN fora which substantively pertains to provisions of this nature in any of these agreements.
  4. To request an opinion of ICANN Staff as to which aspects of registration abuse policies as discussed above may be within the scope of GNSO policy development."
- One of the examples mentioned in the resolution is the recent request through the Registry Services Evaluation Process (RSEP) by Afilias, the .INFO Registry Operator, in which it proposed to create a new .INFO Abusive Use Policy with the aim to "more explicitly define illegal and abusive practices with respect to .INFO domain names, and will set expectations regarding the mitigation of these issues".

1.2 Provisions in Registry Agreements relating to abuse

- This chapter identifies four different categories namely: 1) gTLDs with abuse provisions in the Registry Agreement, 2) gTLDs with abuse provisions in other documents, 3) gTLDs with take down provisions that are open to interpretation and could potentially be used to address abusive behaviour, and, 4) gTLDs with no provisions and/or references related to abuse.
- Research found that eleven out of sixteen gTLDs have provisions in place that address (seven of eleven) or potentially could address (four of eleven) abuse.
- This chapter provides an overview of those provisions deemed relevant in this context.

1.3 Provisions in Registration Agreements relating to Abuse

- ICANN staff reviewed the gTLD registration agreements of a geographically diverse group of ICANN-accredited registrars. In addition to the registration agreements, staff also reviewed documents that were incorporated by reference including, but not limited to, Acceptable Use Policies, Terms and Use Policies, Terms of Service Policies, etc. Collectively, the agreements researched represent more than 50% of all gTLD domain registrations or approximately 50 million domain names. A selection of these agreements and their abuse-related provisions are presented in this chapter.

1.4 Previous discussions in ICANN Fora

- This Chapter identifies a number of previous instances in which the issue of registration abuse provisions in some shape or form has been raised including the Registrar Accreditation Agreement (RAA) review, ALAC activities in relation to the development of a registrars' code of conduct and registrant's rights and responsibilities, and the Registry Internet Safety Group.

1.5 Is the issue in scope of GNSO Policy Making?

- The GNSO Council's resolution requesting this Issues Report requests research into the existing contractual provisions relevant to abuse, and notes that various registry operators have differing policies with respect to abusive registrations, but it does not identify any specific issue or policy concern for exploration in this report. Staff notes that this Issues Report discusses the broad topic of registration abuse, but no specific policy issue or question has been raised at this time. This Issues Report describes a variety of provisions that exist in relevant contracts and related documents. It is unclear from this research whether more uniformity might be necessary to facilitate the technical reliability, and/or operational stability of the Internet (see Section 8 – discussion of possible directions),
- Note, section 4.2.3 of the RAA between ICANN and accredited registrars provides for the establishment of new and revised consensus policies concerning the registration of domain names, including abuse in the registration of names, but policies involving the use of a domain name (unrelated to its registration) are outside the scope of policies that ICANN could enforce on registries and/or registrars. The use of domain names may be taken into account when establishing or changing registration policies. Thus, potential changes to existing contractual provisions related to abuse

in the registration of names would be within scope of GNSO policy making. Consideration of new policies related to the use of a domain name unrelated to its registration would not be within scope.

1.6 Discussion of possible directions

- The research compiled in this report does suggest that:
  - There is no uniform approach by registries / registrars to address abuse.
  - Based on the use of terms evident in this research, there appears to be no universally accepted definition of what constitutes abuse.
  - Many registry agreements explicitly allow registries to take down or terminate domain names for abuse at the companies' discretion, Service providers routinely reserve the right to exercise their best judgement and take action when necessary, especially in an environment where new threats and forms of abuse frequently arise.
  - There are a number of registries that do not have any provisions that deal with abuse. However, this does not necessarily mean that they do not deal with complaints of domain name abuse when they arise. Further research would be needed to determine if and how abuse is dealt with in those registries that do not have any specific provisions in place.
  - It should be emphasised that this report does not identify how these registration abuse provisions are adhered to, are implemented in practice or deemed effective in addressing registration abuse.
- There may be benefits to establishing a consistent framework or definition of registration abuse that is applicable across ICANN accredited registries and registrars. In addition, certain providers may define acceptable use policies based on unique or relevant aspects of the services they offer. In examining the possibility of establishing a uniform or consistent framework, it would be useful to understand better whether registries have unique requirements that may call for differing approaches and definitions. Any new framework and/or definition of registration abuse should also be flexible enough to deal with the rapid changing environment in which registration abuse develops and takes place. Staff suggests that before policy changes are considered, it would be useful to understand if registration abuses are occurring that might be curtailed or better addressed if consistent registration abuse policies were established.

1.7 Staff recommendation

- ICANN staff recommends that the GNSO Council:
  - **Review and Evaluate Findings**

    A first step would be for the GNSO Council to review and evaluate these findings, taking into account that this report provides an overview of registration abuse provisions, but does not analyse how these provisions are implemented in practice and whether they are deemed effective in addressing registration abuse.
  - **Identify specific policy issues**

    Following the review and evaluation of the findings, the GNSO Council would need to determine whether there are specific policy issues regarding registration abuse. As part of this determination it would be helpful to define the specific type(s) of abuse of concern, especially distinguishing between registration abuse and other types of abuse if relevant.
  - **Need for further research**

    As part of the previous two steps, ICANN Staff would recommend that the GNSO Council determines where further research may be needed – e.g. is lack of uniformity a substantial problem, how effective are current registration abuse provisions in addressing abuse in practice, is an initial review or analysis of the UDRP required?

2 Objective

- This report is submitted in response to the request from the GNSO Council for an Issues Report on Registration Abuse Policies as expressed in its Motion proposing an Issues Report on Aspects of Registry-Registrar Agreements.

- In this context, and in compliance with ICANN Bylaws requirements:

a. The proposed subject raised for consideration is registration abuse policies.
b. The identity of the party submitting the issue is the GNSO Council.
c. How that party is affected by the issue: The GNSO is responsible for policy development concerning generic top-level domains. The GNSO resolutions requesting this issues report states that:

> "1. ICANN's mission is to ensure the security and stability of the DNS, and to develop policy reasonably related to that mission.
>
> 2. Various forms of DNS abuse, in isolation and/or in the aggregate, can cause a less secure and stable DNS."

d. Support for the issue to initiate the PDP: Broad support for the preparation of this Issues Report was demonstrated during the GNSO Council teleconference meeting on 25 September 2008 and subsequent absentee ballot voting with 15 votes in favor and 0 against. Under the ICANN bylaws an issue may be raised for consideration as part of a PDP "by a vote of at least 25% of the members of the Council present…".

3 Background

3.1 Process Background

- On 25 September 2008, the GNSO Council resolved "to request an issues report from ICANN Staff with respect to the following:
  - To identify and describe the various provisions in existing and previous gTLD registry and registry-registrar agreements which relate to contracting parties' ability to take action in response to abuse.
  - To identify and describe various provisions in a representative sampling of gTLD registration agreements which relate to contracting parties' and/or registrants rights and obligations with respect to abuse.
  - To identify and describe any previous discussions in ICANN fora which substantively pertains to provisions of this nature in any of these agreements.
  - To request an opinion of ICANN Staff as to which aspects of registration abuse policies as discussed above may be within the scope of GNSO policy development."

3.2 Issue Background

- The GNSO's resolution notes that there are a number of Registry Agreements that contain specific provisions as how to deal with abuse (e.g. .info), while others do not (e.g. .com and .net).
- One of the examples mentioned in the resolution is the recent request through the Registry Services Evaluation Process (RSEP) by Afilias, the .INFO Registry Operator, in which it proposed to create a new .INFO Abusive Use Policy with the aim to "more explicitly define illegal and abusive practices with respect to .INFO domain names, and will set expectations regarding the mitigation of these issues". The Abusive Use Policy is linked to a provision in the current Afilias gTLD Registry-Registrar Agreement (RRA) which notes that: "3.6.5. (Registrars) acknowledge and agree that Afilias reserves the right to deny, cancel or transfer any registration or transaction, or place any domain name(s) on registry lock, hold or similar status, that it deems necessary, in its discretion; (1) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (3) to avoid any

liability, civil or criminal, on the part of Afilias, as well as its affiliates, subsidiaries, officers, directors, and employees; (4) per the terms of the registration agreement or (5) to correct mistakes made by Afilias or any Registrar in connection with a domain name registration. Afilias also reserves the right to place upon registry lock, hold or similar status a domain name during resolution of a dispute."

- Following any registry service request, comments may be submitted during the 15-calendar day review period. As a result, various public comments were received (see, http://forum.icann.org/lists/registryservice/) about the Afilias RSEP request. Comments noted concern with the lack of oversight, possibility of deletion of domain name without due process, risk of arbitrariness, including a call for a consensus policy on this issue (http://forum.icann.org/lists/registryservice/msg00020.html). ICANN staff reviewed the comments, but in most cases they were deemed not on topic. In addition, the initial preliminary determination period coincided with the ICANN meeting in Paris, and, based on the feedback that Afilias received from the Registrar Constituency during the meeting, they revised and resubmitted their request.
- The new .INFO Abusive Use Policy has also featured as topic of discussion in numerous blogs and articles with headlines such as "Domain Name Registry As Judge, Jury and Executioner" (http://www.domainnamenews.com/featured/domain-name-registry-as-judge-jury-and-executioner/1674).
- It is believed that as a result of the competitive pricing offered for .INFO registrations, a large number of registrations were made for malicious purposes such as promoting spam, malware and phishing. As noted by John Levine, author of *The Internet for Dummies* and a former member of ICANN's At-Large Advisory Committee in the 'Mapping the Mal Web Revisited' report from antivirus vendor McAfee, "The very high numbers of bogus sites in .cn and .info makes sense because they are among the cheapest places to register, with the wholesale price for .cn now being about 15 cents". Some speculated that a recent technical glitch with the Google search engine which resulted in .INFO being taken out of its search results was intended as a downgrade of .INFO domain names due to the high level of 'bad' sites (see http://www.webmasterworld.com/google/3657421.htm, http://www.seobook.com/google-temporarily-purges-info-domain-names and http://www.lockergnome.com/dutch/2008/05/24/for-your-info-how-google-almost-gave-me-a-heart-attack/). Furthermore, the McAfee report, identified .INFO as one of

the riskiest Web domains. In light of this, the move by Afilias to clarify its anti-abuse policy could be interpreted as a desire to demonstrate its commitment to fight these abusive registrations more actively and visibly.

- On 6 August 2008, ICANN informed Afilias that the proposed Abusive Use Policy "does not require a change to the .INFO Registry Registrar Agreement. Afilias may implement the Abusive Use Policy as amended on 31 July 2008."
- Afilias posted the .INFO Anti-Abuse Policy on its web site on 6 October 2008 noting that it is "effective upon thirty days notice by Afilias to Registrars". Abusive use in this policy includes:
  - Illegal or fraudulent actions
  - Spam
  - Phishing
  - Pharming
  - Wilful distribution of malware
  - Fast flux hosting
  - Botnet command and control
  - Distribution of child pornography
  - Illegal Access to Other Computers or Networks

  It is furthermore noted that "abusive uses, as defined above, undertaken with respect to .INFO domain names shall give rise to the right of Afilias to take such actions under Section 3.6.5. of the Registry-Registrar Agreement in its sole discretion."

4 Provisions in Registry Agreements relating to abuse

4.1 Introduction

- The GNSO resolution requests staff to identify and describe the various provisions in existing and previous gTLD registry and registry-registrar agreements, which relate to contracting parties' ability to take action in response to abuse.
- ICANN staff reviewed the different gTLD registry and registry-registrar agreements, and, where available on the registry web site, other documents that relate to the rights and obligations associated with abuse such as Acceptable Use Policies and Terms of Agreement. An overview of the relevant provisions can be found below.
- It should be noted that the overview provided in this chapter does not include the Uniform Domain-Name Dispute Resolution Policy (UDRP). All ICANN-accredited registrars are required to follow the UDRP. The UDRP sets forth the terms and conditions in connection with domain registration and use disputes between registrants and any party other than the registrar.

4.2 Overview and Analysis of Findings

- It should be noted that of those registry-registrar agreements reviewed, only .BIZ and .JOBS specifically mention 'abusive' (.BIZ) and 'abusive registration' (.JOBS) in their registry-registrar agreements. However, further investigation of related documents such as selected Acceptable Use Policies and Terms of Agreement, demonstrated that 'abuse' or 'abusive practices' are mentioned and described by other gTLDs (see tables below). As the GNSO Council resolution did not define what constitutes a registration abuse provision, ICANN staff has interpreted a registration abuse provision as meaning a provision that identifies a reason or number of reasons that warrant the cancellation or locking of a registration by the registry operator, either in the registry-registrar agreement or in supporting documents. It should be emphasised that there is no agreed definition for what constitutes abusive behaviour in this context.

- In addition to those registries that have a reference to abuse in their registry-registrar agreement or in supporting documents, a third category[2] of gTLDs has been identified; those that do not mention abuse or define what abuse means to them specifically, but who do have a provision in the registry-registrar agreement that could be open for interpretation and allow the take down of a domain name at the discretion of the registry operator.
- A fourth category of gTLDs consists of those that do not have any provisions in place that deal with abuse or take down of a domain name.
- All four categories have been identified in the tables below. More details on the exact nature of the provisions can be found in the next section.

Category I – gTLDs with abuse provisions in the Registry Agreement

gTLD	Abuse provisions	In the Registry Agreement	In other documents
.BIZ	Yes	Yes (Registry-Registrar Agreement)	No
.JOBS	Yes	Yes (Appendix S – Part VII)	Yes (Application and Registration Agreement)

Category II – gTLDs with abuse provisions in other documents

gTLD	Abuse provisions	In the Registry Agreement	In other documents
.CAT	Yes	Yes (Appendix S – Part II)	Yes (1) Right use and fulfilment Policy and 2) Domain Name Registration Agreement)
.INFO	Yes	No, but the Registry-Registrar Agreement does contain a take down provision	Yes (Domain Anti-Abuse Policy)

[2] It should be noted that some gTLDs included in this category might have supporting documentation on what constitutes abuse, but these were not publicly available at the time of research.

.NAME	Yes	No, but the Registry-Registrar Agreement does contain a take down provision	Yes (Domain Name and Email Forwarding Service Acceptable Use Policy)
.PRO	Yes	No, but the Registry-Registrar Agreement does contain a take down provision	Yes (End User Terms of Use Agreement)
.TRAVEL	Yes	No, but Appendix S does foresee provisions for the delegated authority to revoke or cancel registrations	Yes (Registry Policy)

Category III – gTLDs with take down provisions that are open to interpretation and could potentially be used to address abusive behaviour

gTLD	Take down provisions	In the Registry Agreement	In other documents
.AERO	Yes	Yes (Attachment 10)	No
.ASIA	Yes	No	Yes (General Registry Policies – Final Draft)
.MOBI	Yes	Yes (Registry-Registrar Agreement)	No
.ORG	Yes	Yes (Registry-Registrar Agreement)	No

Category IV – gTLDs with no provisions and/or references related to abuse

gTLD	Abuse or Take Down provisions	In the Registry Agreement	In other documents
.COM	No	No	No
.COOP	No	No	No
.MUSEUM	No	No	No

.NET	No	No	No
.TEL	No	No	No

- Eleven out of sixteen gTLD's have provisions in place that address (seven of eleven) or potentially could address (four of eleven) abuse.
- It should be noted though that some provisions are relatively similar while others differ greatly. In most cases the term 'abuse' has not been defined or is labelled differently (i.e. illegal use, going against the integrity and stability of the registry).
- In the case of the sponsored TLD's (.AERO, .ASIA, .CAT, .COOP .JOBS, .MOBI, .MUSEUM, .TEL, .TRAVEL) specific provisions are in place that verify the status / identity of the applicant to determine whether they fulfil the requirements for the specific TLD which could be seen as a first 'line of defence' against potential abuse and could explain why some of them such as .COOP, .MUSEUM and .TEL do not have any specific provisions in place that deal with abuse. Information obtained from a .COOP representative illustrates this assumption: a registrar had difficulties in removing a domain name related to fast flux issues, but the registry was able to assist 'because the registrant was not an eligible Co-op as defined in our Charter'.

4.3 Provisions in registry agreements that address abuse

Category I – gTLDs with abuse provisions in their Registry Agreements

.JOBS

- Appendix S (5 May 2005)

"Part VII. Additional Provisions

2. Community Value Criteria

Regarding the .jobs TLD, Registry Operator will fulfill the Community Value criteria as set forth during the application process, including "B. Protecting the rights of others" and "C. Assurance of charter-compliant registrations and avoidance of abusive registration practices." (The "Community Value Criteria".)

As set forth generally in Registry Operator's response(s) to the RFP, Registry Operator will fulfill the Community Value Criteria as follows:

The .jobs sTLD has policies and practices which minimize abusive registration activities and other activities that affect the legal rights of others, and which further provide safeguards against unqualified registrations and ensure compliance with ICANN policies.
[…]
Unqualified registrations will be further minimized by the requirement of a Qualified Applicant to submit an application for registration. In the event an application is submitted without a Qualified Applicant, the application will be rejected. In the event an application is accepted with what turns out to be a fraudulent Qualified Applicant, the registration may be deleted.

All registrants are required to enter into a Registration Agreement. The Registration Agreement obligates the prospective registrant to support the SHRM Code (see, Appendix S, "TLD Charter"), to certify that a Qualified Applicant has submitted the application, that the any statements made during the registration process (and in the Registration Agreement) are complete and accurate, that (to the registrant's knowledge) the registration or intended use of the domain name will not infringe upon or otherwise violate the rights of any third party, that the registrant is not registering the domain name for any unlawful purpose, that the registrant will not knowingly use the domain name in violation of any applicable laws or regulations, and that the registration is subject to ICANN's UDRP (as modified for .jobs) and all applicable laws (such as anti-cybersquatting legislation).
[…].
Alternatively, in the event of an abusive or fraudulent use of a domain, the registrant is similarly subject to the UDRP and the prospect of cancellation. Via UDRP and other enforcement (e.g., via litigation) of the Registration Agreement, abusive and/or unqualified registrations are significantly minimized. Furthermore, in the event of egregious fraudulent and/or abusive registration and/or use, Registry Operator reserves the right, in its sole discretion, to suspend and/or delete the offending domain."

- From the .JOBS application and registration agreement

Appendix D - Usage Policy

If used at all, your .jobs domain in the companyname product category (see Appendix B) must be used for human resources ("HR") related purposes, and particularly for the purpose of promoting the HR interests of the Company (i.e., the Company which is the listed registrant for the .jobs domain registration).

You are not obligated to use your .jobs domain in the companyname product category. If you do use your .jobs domain in the companyname product category, however, you may not:

[…]

3. Use your .jobs domain for any purposes which are prohibited by the laws of the United States or the jurisdiction(s) in which you do business or any other applicable law.

4. Use your .jobs domain for any purposes or in any manner which violate a statute, rule or law governing use of the Internet and/or electronic commerce (specifically including "phishing," "hacking," distributing Internet viruses and other destructive activities).

5. Use your .jobs domain for unsolicited email (e.g., spam).

6. Use your .jobs domain to promote or engage in (i) activities designed to or which defame, embarrass, harm, abuse, threaten, slander or harass third parties; (ii) unlawful activities, or activities designed to or which encourage unlawful behavior by others, such as hate crimes and terrorism; (iii) activities that are tortious, vulgar, obscene, invasive of the privacy of a third party, or racially, ethnically, or otherwise objectionable; (iv) activities designed to impersonate any third party or create a likelihood of confusion in sponsorship , origin of products or services or identity of any party; and (v) activities designed to harm minors in any way.

[…]

We have complete enforcement rights over your use of your .jobs domain name. If you violate our usage policy, you will be in material breach of his Agreement, and along with all other rights and remedies we have under this Agreement with respect to such a breach, we reserve the right to revoke, suspend, terminate, cancel or otherwise modify your rights to your domain name."

Category II – gTLDs with abuse provisions in other documents

.CAT

- From .CAT website:

"Right use and fulfilment policy

When you register a .cat domain name you must fill, as part of the process, a declaration of intended use for the domain you register. This declaration does not need to be too detailed, but must be true. If once you got the domain name, your use differs from the one you stated in the "intended use", Fundació puntCAT may require you to explain why and might even block the domain name (ie. keep you as owner but being inoperative for any Internet service like web, mail, etc). Fundació puntCAT may also block your domain if you do any unacceptable use of it like for instance spam or reselling domains. Of course you can always change your declaration of "intended use", but in any case, this change must comply with .cat Registry eligibility charter."

- From .CAT domain name registration agreement:

"9. Cancellation, Suspension of the Domain Name

9.1. You agree to comply with the requirements set forth by REGISTRY in order to register a .CAT domain name. These requirements are incorporated to this Agreement by reference and can be found at http://www.domini.cat/policies.html. In case you do not fulfill the said requirements or use the domain name for illegal purposes including, without limitation, speculative registration, use in bad faith or aimed at harming third- parties' rights, deviation from the intend of use declared by You at the moment of registering the domain name, massive transmission of unsolicited electronic communications ("spam") or any other illegal use, you agree that the domain name used for such purposes may be cancelled by the Registry.

[…]

9.4. You understand and accept that REGISTRY may cause the cancellation or transfer of your registration that it deems necessary, in its discretion, to protect the stability or the registry, to comply with any applicable laws, government rules or requirements, requests of law enforcement, or to avoid any liability, civil or criminal."

.INFO

- Agreement Appendix 8 - Registry-Registrar Agreement (8 December 2006)

"3. OBLIGATIONS OF REGISTRAR

3.6.5. acknowledge and agree that Afilias reserves the right to deny, cancel or transfer any registration or transaction, or place any domain name(s) on registry lock, hold or similar status, that it deems necessary, in its discretion; (1) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of Afilias, as well as its affiliates, subsidiaries, officers, directors, and employees; (4) per the terms of the registration agreement or (5) to correct mistakes made by Afilias or any Registrar in connection with a domain name registration. Afilias also reserves the right to place upon registry lock, hold or similar status a domain name during resolution of a dispute."

- From the .INFO Domain Anti-Abuse Policy:

"Afilias defines abusive use as the wrong or excessive use of power, position or ability, and includes, without limitation, the following:

- *Illegal or fraudulent actions;*
- *Spam: The use of electronic messaging systems to send unsolicited bulk messages. The term applies to e-mail spam and similar abuses such as instant messaging spam, mobile messaging spam, and the spamming of Web sites and Internet forums. An example, for purposes of illustration, would be the use of email in denial-of-service attacks;*
- *Phishing: The use of counterfeit Web pages that are designed to trick recipients into divulging sensitive data such as usernames, passwords, or financial data;*
- *Pharming: The redirecting of unknowing users to fraudulent sites or services, typically through DNS hijacking or poisoning;*
- *Willful distribution of malware: The dissemination of software designed to infiltrate or damage a computer system without the owner's informed consent.*
- *Examples include, without limitation, computer viruses, worms, keyloggers, and trojan horses;*
- *Fast flux hosting: Use of fast-flux techniques to disguise the location of Web sites or other Internet services, or to avoid detection and mitigation efforts, or to host*

illegal activities. Fast-flux techniques use DNS to frequently change the location on the Internet to which the domain name of an Internet host or name server resolves. Fast flux hosting may be used only with prior permission of Afilias;

- *Botnet command and control: Services run on a domain name that are used to control a collection of compromised computers or "zombies," or to direct denial-of-service attacks (DDoS attacks);*
- *Distribution of child pornography; and*
- *Illegal Access to Other Computers or Networks: Illegally accessing computers, accounts, or networks belonging to another party, or attempting to penetrate security measures of another individual's system (often known as "hacking"). Also, any activity that might be used as a precursor to an attempted system penetration (e.g., port scan, stealth scan, or other information gathering activity).*

[…]

Abusive uses, as defined above, undertaken with respect to .INFO domain names shall give rise to the right of Afilias to take such actions under Section 3.6.5 of the RRA in its sole discretion."

.NAME

- Agreement Appendix 8 - Registry-Registrar Agreement (15 August 2007)

"3. OBLIGATIONS OF REGISTRAR

3.6. Additional Requirements for Registration Agreement.

3.6.6. Acknowledge and agree that GNR reserves the right to deny, cancel or transfer any registration or transaction, or place any Registered Item(s) on registry lock, hold or similar status, or additionally for SLD email forwarding implement throttling/blocking and/or size limitations, that it deems necessary, in its discretion; (1) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of GNR, as well as its affiliates, subsidiaries, officers, directors, and employees; (4) per the terms of the registration agreement or (5) to correct mistakes made by GNR or any Registrar in connection with a Registered Item registration. GNR also reserves the right to place upon registry lock, hold or similar status a Registered Item during resolution of a dispute."

- Agreement Appendix 11 - Registration Restrictions (15 August 2007)

"4. Reservation

Registry Operator reserves the right to transfer or cancel any Registered Name or SLD e-mail (a) for violations of the Registry Agreement and its Appendices, (b) to correct mistakes made by Registry Operator or any Registrar in connection with a domain name or SLD e-mail registration, or (c) avoid any liability, civil or criminal, on the part of Registry Operator, as well as its affiliates, subsidiaries, officers, directors and employees. ICANN-Accredited Registrars registering names in the .name TLD agree to comply with ICANN standards, policies, procedures, and practices limiting the domain names that may be registered, and the applicable statutes and regulations limiting the domain names that may be registered."

- From the Acceptable Use Policy:

"Illegal Use

The Services may be used only for lawful purposes. Transmission, distribution or storage of any material via the Services in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates any applicable laws.

System and Network Security

Violations of system or network security are prohibited and may result in criminal and/or civil liability. Global Name Registry will investigate incidents involving such violations and may involve and will cooperate with law enforcement if a criminal violation is suspected. Examples of system or network security violations include, without limitation, the following:

• Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of Global Name Registry.

• Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network. Interference with service to any user, host or network including, without limitation, mailbombing, flooding, deliberate attempts to overload a system and broadcast attacks.

Unsolicited Commercial Email

To reduce the problem of unsolicited commercial email ("UCE" or "Spam"), Global Name Registry will seek to implement the relevant parts of RFC 2505 - Anti-Spam Recommendations for SMTP MTAs. Notwithstanding Global Name Registry's efforts to deter Spam, users are prohibited from engaging in Spamming activities and may be subject to criminal and/or civil liability to the extent that any user engages in such activities. Examples of Spam include, but are not limited to, the following:

Sending unsolicited bulk mail messages, including the sending of "junk mail" or other advertising material to individuals who did not specifically request such material. This includes, but is not limited to, bulk-mailing of commercial advertising, informational announcements and political tracts. Such material may only be sent to those who have expressly requested it. If a recipient asks to stop receiving such email, then any further sending would constitute Spam and violate this AUP.

• Harassment, whether through language, frequency, or size of messages.

• Creating or forwarding "make-money fast" type messages, "chain letters" or "pyramid schemes" of any type, whether or not the recipient wishes to receive such messages.

• Malicious email, including, but not limited to, flooding a user or site with very large or numerous pieces of email.

• Unauthorized use, or forging, of mail header information (i.e., spoofing).

[…]

Consumer Protection

No party may use the Global Name Registry network for any communications or activity which may involve deceptive marketing practices such as the fraudulent offering of products, items, or services. Moreover, no party may furnish false or misleading information to Global Name Registry or any other party through its network, nor shall any party use the network to facilitate the transmission of private or stolen data such as credit card information (without the cardholder's consent).

Network Integrity

No party may actually, nor attempt to, circumvent user authentication or security of any host, network or accounts, or penetrate security measures ("hacking") on, related to, or accessed through the Global Name Registry network. This includes, but is not

limited to, accessing data not intended for such user, logging into a server or account which such user is not expressly authorized to access, falsifying a username or password, probing the security of other networks, and executing any form of network monitoring which will intercept data not intended for such user. Further, no party shall effect any security breach or disrupt any Internet communications including, but not limited to, accessing data of which such user is not an intended recipient or logging onto a server or account which such user is not expressly authorized to access. For purposes of this section, "disruption" includes, but is not limited to, port scans, ping floods, packet spoofing, forged routing information, deliberate attempts to overload a service, and attempts to "crash" a host. Finally, no party may utilize the Global Name Registry network in connection with the use of any program, script, command, or sending of messages, designed to interfere with a user's terminal session, by any means, locally or by the Internet.

Compliance with Law; Respecting Rights

No party shall post, transmit, re-transmit, distribute, promote, market, or store material on or through the Global Name Registry network or otherwise using the Services, which (i) is threatening, abusive, hateful, obscene, indecent, or defamatory; (ii) involves the exportation of software or technical information in violation of applicable export control laws; (iii) encourages conduct that may constitute a criminal offense; (iv) constitutes a copyright infringement; or (v) involves the transmission, distribution, or storage of information or data which on its face is in violation of any law or contains a virus.

INDIRECT OR ATTEMPTED VIOLATIONS OF THE AUP, AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY ON BEHALF OF A USER OF .NAME EMAIL SHALL BE CONSIDERED VIOLATIONS OF THE AUP BY SUCH USER.

[…]

Enforcement

Global Name Registry may, in its sole discretion, suspend or terminate a user's Service(s) for any violation of the AUP at any time and without warning. However, Global Name Registry attempts to work with users to cure violations and to ensure that there is no re-occurrence of the violation prior to terminating service."

.PRO

- Appendix F (.pro) - 30 April 2008

"Registry-Registrar Agreement

Exhibit E: Registry Operator's Operational Standards, Policies, Procedures, And Practices

VIII. Reservation. Registry Operator reserves the right to deny, cancel, modify or transfer any registration that it deems necessary, in its discretion; (1) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, in compliance with any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of Registry Operator, as well as its affiliates, subsidiaries, officers, directors, and employees; (4) for violations of this Agreement and its Exhibits; or (5) to correct mistakes made by Registry Operator or any Registrar in connection with a domain name registration. Registry Operator also reserves the right to place a domain name on Registry Lock or Registry Hold, as appropriate, during resolution of a dispute."

- From RegistryPro End User Terms Of Use Agreement

"4. Proper Use. You agree that you are responsible for your own use of the Service including all communications made using the Service and any consequences thereof. Your use of the Service is subject to your acceptance of and compliance with this Agreement, as well as the regulations applicable to you as a licensed professional. You agree that you will use the Service in compliance with all applicable local, state, national, and international laws, rules and regulations, including any laws regarding the transmission of technical data exported from your country of residence. You shall not, shall not agree to, and shall not authorize or encourage any third party to: (a) use the Service to upload, transmit or otherwise distribute any content that is unlawful, defamatory, harassing, abusive, fraudulent, obscene, contains viruses, or is otherwise objectionable as reasonably determined by Registrar; (b) upload, transmit or otherwise distribute content that infringes upon another party's intellectual property rights or other proprietary, contractual or fiduciary rights or obligations; (c) prevent others from using the Service; (d) use the Service for any fraudulent or inappropriate purpose; (e) act in any way that violates these Terms of Use, as may be revised from time to time; or (f) facilitate use of the Service by any person or entity not a party to

this Agreement. Violation of any of the foregoing may result in immediate termination of this Agreement, and may subject you to state and federal penalties and other legal consequences. Registrar reserves the right, but shall have no obligation, to investigate your use of the Service and in order to determine whether a violation of the Agreement has occurred. Registrar reserves the right to provide information to third parties pursuant to a contractual or legal obligation."

.TRAVEL

- Appendix S - Part II

"Delegated Authority

The following areas of responsibility for development of policies for the Sponsored TLD are delegated to the Registry, provided the other provisions of the Agreement and its Appendices are followed:

[…]

2. Restrictions on what types of people or entities may register Registered Names (which need not be uniform for all names within the Sponsored TLD), provided the scope of the Charter is not exceeded.

3. Restrictions on how Registered Names may be used (which need not be uniform for all names within the Sponsored TLD), provided the scope of the Charter is not exceeded.

4. Performance of Eligibility and Name-Selection Services (ENS Services), either directly by the Registry or by one or more organizations or individuals to which it delegates the responsibility for performing ENS Services.

5. Mechanisms for enforcement of the restrictions in items 2 and 3, including procedures for revocation or cancellation of registrations.

6. Mechanisms for resolution of disputes concerning eligibility between eligible entities and of disputes between owners of rights (who may or may not be registrants) in names (such as trademarks) and registrants, that do not supplant ICANN's dispute-resolution policies or remedies that may be available under law."

- From .Travel registry policy

"7.5 Revocation

The Registrant Agreement will contain terms permitting the Registry to revoke the license to use a .travel domain name for the reasons outlined below:

[….]

8. If the .travel domain name, or the use of the .travel domain name, is not in the best interests of the Sponsored community;"

Category III – gTLDs with take down provisions that are open to interpretation and could potentially be used to address abusive behaviour

.AERO

- TLD Sponsorship Agreement: Attachment 10

"Minimum Commitments Required of Registered Name Holders
9. The Registered Name Holder represents that, to the best of the Registered Name Holders' 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.
[….]
11. The Registered Name Holder's registration of the Registered Name shall be subject to suspension, cancellation, or transfer pursuant to any Sponsor- or ICANN-adopted specification or policy, or pursuant to any registrar or registry procedure not inconsistent with an ICANN adopted specification or policy, (1) to correct mistakes by Sponsor, Registry Operator, or Registrar in connection with registration of the name or (2) for the resolution of disputes concerning the Registered Name."

.ASIA

- From the General Registry Policies – Final Draft

"Acknowledge and agree that DotAsia and Registry Services Provider, acting in consent with DotAsia, reserves the right to deny, cancel or transfer any registration that it deems necessary, in its sole discretion (i) to protect the integrity security, and stability of the registry; (ii) to comply with all appropriate laws, government rules or requirements, requests of law enforcement, in compliance with any dispute resolution process; (iii) to avoid any liability, civil or criminal, on the part of DotAsia as well as its affiliates, subsidiaries, officers, directors, representatives, employees, and stockholders; (iv) for violations of the terms and conditions set forth in DotAsia's agreement with any party; or (v) to correct mistakes made by DotAsia, the Registry Services Provider or any registrar in connection with a domain name registration.

DotAsia also reserves the right to freeze a Registered Name such as placing a domain name on hold, lock, or other status during the resolution of a dispute."

.BIZ

- Agreement Appendix 8 - Registry-Registrar Agreement

"III. Reservation

Registry Operator reserves the right to deny, cancel, place on registry-lock or hold, or transfer any registration that it deems necessary, in its discretion; (1) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, in compliance with any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of Registry Operator, as well as its affiliates, subsidiaries, officers, directors, employees and stockholders; (4) for violations of this Agreement and its Exhibits; or (5) to correct mistakes made by Registry Operator or any Registrar in connection with a domain name registration. Registry Operator also reserves the right to lock or place on hold a domain name during resolution of a dispute.

[….]

Exhibit D

Registry Operator's Operational Standards, Policies, Procedures and Practices

Registering a domain name solely for the purposes of (1) selling, trading or leasing the domain name for compensation, or (2) the unsolicited offering to sell, trade or lease the domain name for compensation shall not constitute a "bona fide business or commercial use" of that domain name.

For illustration purposes, the following shall not constitute a "bona fide business or commercial use" of a domain name:

1. Using or intending to use the domain name exclusively for personal, noncommercial purposes; or

2. Using or intending to use the domain name exclusively for the expression of noncommercial ideas (i.e., registering abcsucks.biz exclusively to criticize or otherwise express an opinion on the products or services of ABC company, with no other intended business or commercial purpose);

3. Using the domain name for the submission of unsolicited bulk e-mail, phishing, pharming or other abusive or fraudulent purposes."

- However, the Registry-Registrar agreement does specify that it is not the Registry but an independent ICANN-accredited dispute provider that would take action in the case of non-bona fide business or commercial use of a domain name:

"The RDRP sets forth the terms under which any allegation that a domain name is not used primarily for business or commercial purposes shall be enforced on a case-by-case, fact specific basis by an independent ICANN-accredited dispute provider. None of the violations of the Restrictions will be enforced directly by or through Registry Operator. Registry Operator will not review, monitor, or otherwise verify that any particular domain name is being used primarily for business or commercial purposes or that a domain name is being used in compliance with the UDRP processes."

- Appendix 11 – .BIZ registration restrictions

"Registering a domain name solely for the purposes of (1) selling, trading or leasing the domain name for compensation, or (2) the unsolicited offering to sell, trade or lease the domain name for compensation shall not constitute a "bona fide business or commercial use" of that domain name.

For illustration purposes, the following shall not constitute a "bona fide business or commercial use" of a domain name:
[…]
2. Using or intending to use the domain name exclusively for the expression of noncommercial ideas (i.e., registering xxxsucks.biz exclusively to criticize or otherwise express an opinion on the products or services of ABC company, with no other intended business or commercial purpose);
3. Using the domain name for the submission of unsolicited bulk e-mail, phishing, pharming or other abusive or fraudulent purposes.
[…]
Reservation
Registry Operator reserves the right to deny, cancel, place on registry-lock or hold, or transfer any registration that it deems necessary, in its discretion, (i) to protect the

integrity and stability of the registry, (ii) to comply with any applicable laws, government rules or requirements, requests of law enforcement, (iii) in compliance with any dispute resolution process, (iv) to enforce, at its sole discretion, any of the Restrictions above, or (vi) to avoid any liability, civil or criminal, on the part of Registry Operator, as well as its affiliates, subsidiaries, officers, directors and employees. Registry Operator also reserves the right to freeze a domain name during resolution of a dispute.

.MOBI

- Registry-Registrar Agreement

"3 OBLIGATIONS OF REGISTRAR

3.8 Compliance with Terms and Conditions

3.8.8 You hereby acknowledge and agree that the Registry and Registry Services Provider, acting in consent with the Registry, reserves the right to deny, cancel or transfer any registration that it deems necessary, in its discretion (i) to protect the integrity and stability of the registry; (ii) to comply with all applicable laws, government rules or requirements, requests of law enforcement, in compliance with any dispute resolution process; (iii) to avoid any liability, civil or criminal, on the part of the Registry as well as its affiliates, subsidiaries, officers, directors, representatives, employees, and stockholders; (iv) for violations of the terms and conditions herein; or (v) to correct mistakes made by the Registry or any registrar in connection with a domain name registration. The Registry also reserves the right to freeze a Registered Name during resolution of a dispute."

.ORG

- Appendix 8 - Registry-Registrar Agreement (4 April 2007)

"3. OBLIGATIONS OF REGISTRAR

3.6.5. acknowledge and agree that PIR reserves the right to deny, cancel or transfer any registration or transaction, or place any domain name(s) on registry lock, hold or similar status, that it deems necessary, in its discretion; (1) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of PIR, as well as its affiliates, subsidiaries, officers, directors, and employees; (4) per the terms of the registration

agreement or (5) to correct mistakes made by PIR or any Registrar in connection with a domain name registration. PIR also reserves the right to place upon registry lock, hold or similar status a domain name during resolution of a dispute.

[…]

6. INDEMNITIES AND LIMITATION OF LIABILITY

6.5. Reservation of Rights. PIR reserves the right to deny, cancel or transfer any registration or transaction, or place any domain name(s) on registry lock, hold or similar status, that it deems necessary, in its discretion; (1) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of PIR, as well as its affiliates, subsidiaries, officers, directors, and employees; (4) for violations of this Agreement, including, without limitation, the exhibits hereto; or (5) to correct mistakes made by PIR or any Registrar in connection with a domain name registration. PIR also reserves the right to place a domain name on registry hold, registry lock, or similar status during resolution of a dispute. "

5 Provisions in Registration Agreements relating to abuse

5.1 Introduction

- The GNSO resolution requested staff identify and describe various provisions in a representative sampling of gTLD registration agreements which relate to contracting parties' and/or registrant rights and obligations with respect to abuse. In this section of the Report, registration agreement refers to the agreement made between a registrar and a registrant at the time of a domain name registration.
- ICANN staff reviewed the gTLD registration agreements of a geographically diverse group of ICANN-accredited registrars. In addition to the registration agreements, staff also reviewed documents that were incorporated by reference including, but not limited to, Acceptable Use Policies, Terms and Use Policies, Terms of Service Policies, etc. Collectively, the agreements researched represent more than 50% of all gTLD domain registrations or approximately 50 million domain names. A selection of these agreements and their abuse-related provisions are presented in the research.
- Many registration agreements provide additional appendices that detail specific restrictions associated with the top-level domains the registrar makes available to its customers. The preparation of this Issues Report did not include a review these appendices as they vary from registrar to registrar and were deemed to be outside the scope of the analysis of the registrar's standard registration agreement.
- It should be noted that registrars, in addition to making domain name registrations, may make available a variety of services (e.g., web hosting, technical back end services, etc.) and those services may be subject to additional restrictive use polices. This report's focus is domain names and thus policies associated with additional services have not been explored.
- The registration agreements of the largest registrars generally incorporate by reference an Acceptable Use Policy (AUP). The terms of the AUP vary from registrar to registrar and broadly address uses that pose an unacceptable risk to the stability, integrity and quality of the registrar's systems or the systems' of its vendors, or harm or threaten to harm the rights of third parties. In every case of a violation of the AUP,

the registrar retains the right to take action against the registrant including suspending, restricting or terminating accounts.

5.2 Examples of provisions in registration agreements that address abuse

DomainRegistry.com Inc.

- DomainRegistry.com Inc., registrar IANA # 128, is located in the United States. The URL for this registrar is http://www.domainregistry.com/domainregistry and its Registration Agreement is viewable at http://www.urs.com/domainregistry/agreement.jsp.
- Domain Registry Services' registration agreement states it, "*Reserves the right to suspend or cancel your domain name, in its sole discretion, in the event that credible information is submitted to, or otherwise obtained by, DR, indicating that you have engaged in Internet Abuse, or that your domain name has been used to promote or otherwise facilitate Internet Abuse. .*
- *The registration agreement further cites examples of Internet Abuse that include activity by you that adversely affects:*
  - the service that DR provides to other persons, including but not limited to customers;
  - the ability of DR to administer its services to the public or administer itself as a company; and,
  - the ability of DR to comply with the policies and procedures of ICANN or a Registry, or its contractual obligations with ICANN or a Registry, or the laws or regulations of any country, state or other jurisdiction in which DotRegistrar *[sic.]* or its customers may reside or do business.
- Other examples of Internet Abuse include*:*
  - use of DR's services to violate the laws or regulations of any country, state, or other jurisdiction in which the Internet may operate, or in a manner that adversely affects the legal rights of any other person;
  - use of computerized or other automated means to repeatedly, in a continuous fashion, attempt to register domain names or make use of Whois services to survey domain names, whether or not those domain names have been previously registered by another party, and doing so in such manner as to

pose the risk of impeding DR from providing timely service to other subscribers;
- use of domain names registered to send unsolicited mass mailings of a commercial nature to Internet users (*e.g.*, spamming); and,
- registration of a domain name with the intent to deprive a rightful holder of a trademark the value or benefit of that holder's use or possession of such trademark.

- Domain Registry Services' agreement states that Internet Abuse is a material breach of the agreement. It further provides that, "In the event that DR obtains credible information that you have engaged in Internet Abuse, it may, in addition to any remedies available in this Agreement for such breach, immediately suspend service to you and suspend the registration of any and all domain names of yours for which DR is the registrar. At the time of such immediate suspension of service or domain name registration, DR shall provide notice to you of its action and the basis of such action, including the specific allegation constituting abuse of service, and a brief description of the evidence which DR is relying upon for such action. Any suspension determination will be reversed upon your demonstration, within ten days of the notice (as determined in section 13) and to the satisfaction of DR (within its sole discretion), that you have not engaged in Internet Abuse, or upon an order of a court of competent jurisdiction commanding such reversal."

Melbourne IT Ltd

- Melbourne IT Ltd, registrar IANA # 13, is located in Australia. The URL for this registrar is http://www.melbourneit.com.au. Its Registration Agreement is viewable at http://www.melbourneit.com.au/policies/gtldtermcond.php3 and its Acceptable Use Policy is viewable at http://www.melbourneit.com.au/policies/acceptableusepolicy.php.
- Melbourne IT's registration agreement and acceptable use policy have specific provisions that address actions it may take against registrants.
- Section 15, Suspension, Cancellation, Transfer, of the registration agreement, states, *"Registrant agrees that registration of its domain name shall be subject to suspension, cancellation or transfer by any ICANN procedure, or by any registry administrator procedure approved by ICANN policy:*

a) *to correct mistakes by Registrar or the registry administrator in registering the domain name;*
b) *for the resolution of disputes concerning the domain name; or*
c) *in case of arbitration or court proceedings being commenced with respect to the rights to the domain name. In addition to the above rights, Melbourne IT may suspend or cancel the registration of Registrant's domain name, or, suspend the delegation of Registrant's Domain Name, if as reasonably determined by Melbourne IT in its sole discretion, the Registrant or any other person uses the domain name in connection with any:*
d) *activity that infringes the intellectual property rights or other rights of any third party;*
e) *activity that defames or disparages any third party; or*
f) *otherwise illegal or fraudulent activity, or otherwise in accordance with Melbourne IT's Acceptable Use Policy*.

- The Acceptable Use Policy outlines the following non-acceptable uses of services – prohibited activities
  1. spamming
  2. intellectual property and privacy violations
  3. obscene speech or materials
  4. defamatory or abusive language
  5. forging of headers, return addresses and Internet protocol addresses
  6. illegal or unauthorized access to other computers or networks
  7. distribution of Internet viruses, worms, Trojan horses, or other destructive activities
  8. facilitating a violation of the acceptable use policy
  9. export control violations
  10. usenet groups
  11. other illegal activities
  12. other activities
- Melbourne IT further retains the following rights if registrants engage in prohibited or harmful activities:
  1. removing any or all information, content, material software or other content stored in the facilities, network or systems of Melbourne IT or its Supplier;

2. shutting down a websites (which may include, without limitation, for the avoidance of doubt, parked pages and online cards);
3. implementing screening software designed to block offending transmissions;
4. implementing screening software designed to block offending transmissions;
5. denying access to the Internet;
6. suspending your access to the Services;
7. terminating your account with Melbourne IT without notice to you; or
8. take any other action it deems appropriate.

Key-Systems GmbH

- Key-Systems GmbH, registrar IANA # 269, is located in Germany. The URL for this registrar is http://www.key-systems.net and its Registration Agreement is viewable at http://www.domaindiscount24.com/?page=about_terms#terms.
- Section 10, part 2 of the agreement states, "*The customer may not offend legal prohibitions, the morals and the rights of third parties (brands, name -, authors -, data protection laws etc..), by means of the Internet-presence, placing banners on the website, the designation of his E-Mail address and the contents of his operational website. In particular the customer is committed not to publish pornographic contents and no services directed towards realisation of profits, that are related to pornographic or erotic contents (e.g. pictures of naked people, Peepshows etc..). The customer is not allowed to enter his website in Search-Engines as long as the customer uses key-words which could violate legal prohibitions, the morals and rights of third parties. In each case, the customer will be held liable for all damages resulting from above. Furthermore the customer is committed to cover all damages with may have resulted due to the above."*
- Furthermore, Section 11, part 2 states, "*The customer is committed not to dispatch any advertisement or have advertisement dispatched, without the explicit agreement of the respective receiver. This applies especially if the respective emails have the same content and are sent to a broad mass (so-called "Samming"* [*sic*.]*). Should the customer violate this responsibility, then Key-Systems has the right to delete all services and hold the customer liable for all damages resulting from this.*

Go Daddy

- Go Daddy, registrar IANA # 146, is located in the United States. The URL for this registrar is http://www.godaddy.com/, its Registration Agreement is viewable at http://www.godaddy.com/gdshop/legal_agreements/show_doc.asp?pageid=REG_SA and the Terms of Service are viewable at http://www.godaddy.com/gdshop/agreements.asp?prog_id=GoDaddy&isc=.
- Section 7 of the agreement pertains to Restrictions of Services; Rights of Refusal. A clause in this section states, *"You are responsible for ensuring that there is no excessive overloading on Go Daddy's DNS systems. You may not use Go Daddy's servers and Your domain as a source, intermediary, reply to address, or destination address for mail bombs, Internet packet flooding, packet corruption, or other abusive attack. Server hacking or other perpetration of security breaches is prohibited. You agree that Go Daddy reserves the right to deactivate Your domain name from its DNS system if Go Daddy deems it is the recipient of activities caused by Your site that threaten the stability of its network.*
- Furthermore, "*Go Daddy also may in its sole discretion and without liability to You delete the registration of any domain name during the first thirty (30) days after registration has taken place. Go Daddy may also cancel the registration of a domain name, after thirty (30) days, if that name is being used, as determined by Go Daddy in its sole discretion, in association with spam or morally objectionable activities. Morally objectionable activities will include, but not be limited to: activities designed to defame, embarrass, harm, abuse, threaten, slander or harass third parties; activities prohibited by the laws of the United States and/or foreign territories in which You conduct business; activities designed to encourage unlawful behavior by others, such as hate crimes, terrorism and child pornography; activities that are tortious, vulgar, obscene, invasive of the privacy of a third party, racially, ethnically, or otherwise objectionable; activities designed to impersonate the identity of a third party; and activities designed to harm or use unethically minors in any way".*

Network Solutions

- Network Solutions, registrar IANA # 2, is located in the United States. The URL for this registrar is http://www.networksolutions.com, its Registration Agreement is viewable at http://www.networksolutions.com/legal/static-service-

agreement.jsp#general and the Acceptable Use Policy at http://www.networksolutions.com/legal/aup.jsp;jsessionid=e374cd31ef4914866442ab7c47f94:+cjA.

- Section 10 of the agreement addresses termination and states, *"We may terminate this Agreement or any part of the Network Solutions services at any time in the event you breach any obligation hereunder, fail to respond within ten (10) calendar days to an inquiry from us concerning the accuracy or completeness of the information referred to in Section 4 of this Agreement, if we determine in our sole discretion that you have violated the Network Solutions Acceptable Use Policy, which is located on our Web site at http://www.networksolutions.com/legal/aup.jsp and is incorporated herein and made part of this Agreement by reference, or upon thirty (30) days prior written notice if we terminate or significantly alter a product or service offering."*
  - The Acceptable Use Policy outlines the following prohibited uses:
  - Transmission, distribution, uploading, posting or storage of any material in violation of any applicable law or regulation is prohibited.
  - Sending Unsolicited Bulk Email ("UBE", "spam").
  - Running Unconfirmed Mailing Lists.
  - Advertising, transmitting, or otherwise making available or using any software, program, product, or service that is designed to violate this AUP or the AUP of any other Internet Service Provider, which includes, but is not limited to, the facilitation of the means to send Unsolicited Bulk Email, initiation of pinging, flooding, mail-bombing, denial of service attacks.
  - Forwarding Internet users to any Web site that, if such web site were provided by Network Solutions, would violate the provisions of this Acceptable Use Policy.
  - Using the Private Registration service to provide anonymity to activities which are unlawful, fraudulent, or violate the intellectual property rights of a third party.
  - Using the DNS Manager service, or knowingly or recklessly permitting others to use the DNS Manager Services: (a) for any unlawful, invasive, infringing, defamatory, or fraudulent purpose; (b) to alter, steal, corrupt, disable, destroy, trespass or violate any security or encryption of any computer file, database or network; (c) so as to materially interfere with the use of Network Solutions'

network by other customers or authorized users; (d) in a manner that is inconsistent with Network Solutions routing policies, provided you have notice of such policies or such policies are publicly available on Network Solutions Web site; (e) in violation of the applicable acceptable use policies of Network Solutions' backbone providers, provided you have notice of such policies or such policies are publicly available on such backbone providers' Web sites; (f) to alter, tamper with, adjust, repair or circumvent any aspect of the DNS Manager Service provided by Network Solutions; or (g) in a manner which, in Network Solutions opinion, is inconsistent with the generally accepted rules of Internet etiquette and conduct.

- Unauthorized attempts by a user to gain access to any account or computer resource not belonging to that user (e.g., "cracking").
- Obtaining or attempting to obtain service by any means or device with intent to avoid payment.
- Engaging in any activities that do or are designed to harass, or that will cause a denial-of-service (e.g., synchronized number sequence attacks) to any other user whether on the Network Solutions network or on another provider's network.
- Using Network Solutions' services in a manner that interferes with the use or enjoyment of the Network Solutions network or other services by other customers or authorized users. This shall include excessive use of services which impair the fair use of other Network Solutions customers.
- Holding of Network Solutions (including its affiliates) or their employees or shareholders up to public scorn, ridicule, or defamation.
- Impersonating any person or entity, including, but not limited to, a Network Solutions official, or falsely stating or otherwise misrepresenting your affiliation with a person or entity.

6 Previous discussions in ICANN For a

- The GNSO Council resolution requested ICANN staff to identify and describe any previous discussions in ICANN fora which substantively pertain to provisions of this nature in any of these agreements.
- In order to obtain this information ICANN staff conducted on-line research and reached out to ICANN Community members familiar with ICANN history. As a result, the following discussions have been identified.
- It should be noted that abuse is a very broad topic. ICANN staff attempted to identify discrete relevant discussions, but this may not be an exhaustive inventory depending on how the term abuse is defined.

6.1 Proposed .XXX Charter

- The issue of proposed take-downs has come up in the wake of ICM Registry's proposed Appendix S language -- see http://www.icann.org/en/tlds/agreements/xxx/appendix-S-rev-16feb07.pdf at page 32 (Rapid Takedown).
- The issue was first brought to the attention of the GA through this post: http://gnso.icann.org/mailing-lists/archives/ga/msg06059.html
- Comments were later submitted by director Susan Crawford: "I continue to be dissatisfied with elements of the proposed xxx contract, including but not limited to the “rapid takedown” provision of Appendix S" -- http://scrawford.blogware.com/blog/_archives/2007/3/30/2845638.html

6.2 Business Constituency

- The issue of developing an approach to expedited takedowns has been discussed within the Business Constituency: "... a rapid takedown procedure is needed; there is a need for a balanced system ... .eu and proposed .xxx rapid take down system may be models to consider. ..." -- see http://www.bizconst.org/MemberCalls/MemberCall_07-03-2007.doc

6.3 Rights Protection Mechanisms Working Group

- On a wider discussion basis (at the GNSO Working Session in Los Angeles), the topic was raised within the rights protection mechanisms working group: "We're also looking at mechanisms to curb abusive registrations, things like anti -phishing suspension plan by registries. Things like a rapid take-down proposal that was proposed by ICM." -- see http://gnso.icann.org/meetings/transcript-rpm-working-session-27oct07.pdf

6.4 Registrar Accreditation Agreement (RAA) / ALAC Working Group for a Registrar Code of Conduct

- The RAA agreement specifies that "*3.7.1 In the event ICANN adopts a specification or policy, supported by a consensus of ICANN-Accredited registrars, establishing or approving a Code of Conduct for ICANN-Accredited registrars, Registrar shall abide by that Code*".
- As part of the currently ongoing review of the RAA, a comment was received related to an Acceptable Use Policy in registration agreements to address criminal fraud:
  "F. The remaining suggestions were considered by staff to be unsuitable as amendments to the RAA either because they cannot be feasibly implemented as RAA provisions, because the issue is best addressed through the freedom and choice available to registrants as they select a registrar, or because they are beyond ICANN's mission and scope. To the extent feasible registrars or other parties may be in a position to implement some of these recommendations.
  […]
  2. ICANN should require standardized Acceptable Use Policy in registration agreements to address criminal fraud."
- The At-Large Advisory Committee (ALAC) did not agree with this assessment by ICANN staff and noted in its Statement to the Board of ICANN on Amendments to the Registrar Accreditation Agreement that in its view the requirement of an Acceptable Use Policy and other points 'remain valid candidates for consideration'.
- In addition, the ALAC is planning to set up a Working Group on a Registrar Code of Conduct as well as Registrant Rights & Responsibilities in relation to the RAA review.

6.5 Registry Internet Safety Group

- In addition to these discussions, ICANN staff came across another initiative, outside of the ICANN community, which might be of interest in this context, namely the Registry Internet Safety Group (RISG) in which a number of gTLD registries are involved (.ORG, .BIZ, .INFO).
- As part of its objective to explore options and best practices to stop identify ID theft, it lists in a recent presentation to 'adopt domain suspension at registry level' and to 'adopt consistent policies across TLDs to minimize domain abuse' as possibilities to be considered.

7 Is this issue in scope of GNSO Policy Making?

In determining whether the issue is within the scope of the ICANN policy process and the scope of the GNSO, staff and the General Counsel's office have considered the following factors:

7.1 Whether the issue is within the scope of ICANN's mission statement

The ICANN Bylaws state that:
"The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, ICANN:

1. *Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are*
    a) *domain names (forming a system referred to as "DNS");*
    b) *Internet protocol ("IP) addresses and autonomous system ("AS") numbers; and,*
    c) *Protocol port and parameter numbers*
2. *Coordinates the operation and evolution of the DNS root name server system*
3. *Coordinates policy development reasonable and appropriately related to these technical functions."*

The GNSO Council's resolution requesting this Issues Report requests research into the existing contractual provisions relevant to abuse, and notes that various registry operators have differing policies with respect to abusive registrations, but it does not identify any specific issue or policy concern for exploration in this report. In responding to the questions below, staff notes that this Issues Report discusses the broad topic of registration abuse, but no specific policy issue or question has been raised at this time. This Issues Report describes a variety of provisions that exist in relevant contracts and related documents. It is unclear from this research whether more uniformity might be necessary to facilitate the technical reliability, and/or operational stability of the Internet (see Section 8 – discussion of possible directions).

If in its next steps, the Council identifies specific policy issues or questions related to registration abuse that warrant further examination or policy development activity, the following questions related to scope should be reconsidered in the context of the specific issue(s) presented.

Note, section 4.2.3 of the Registrar Accreditation Agreement between ICANN and accredited registrars provides for the establishment of new and revised consensus policies concerning the registration of domain names, including abuse in the registration of names, but policies involving the use of a domain name (unrelated to its registration) are outside the scope of policies that ICANN could enforce on registries and/or registrars. The use of domain names may be taken into account when establishing or changing registration policies. Thus, potential changes to existing contractual provisions related to abuse in the registration of names would be within scope of GNSO policy making. Consideration of new policies related to the use of a domain name unrelated to its registration would not be within scope.

7.2 Whether the issue is broadly applicable to multiple situations or organisations

No specific issue has been identified at this time. A consideration of registration abuse provisions would be broadly applicable to multiple situations or organisations, including each existing gTLD under contract with ICANN, each of 900+ accredited registrars and a diversity of existing and potential registrants. Note, however, that a consensus policy resulting from the GNSO policy development process would only be applicable to gTLD registries and ICANN-accredited registrars operating under contract with ICANN and only if such policies are within the allowable topics for consensus policies in ICANN's registries / registrars agreements.

7.3 Whether the issue is likely to have lasting value or applicability, albeit with the need for occasional updates

No specific issue has been identified at this time.

7.4 Whether the issue will establish a guide or framework for future decision-making

No specific issue has been identified at this time.

7.5 Whether the issue implicates or affects an existing ICANN policy

No specific issue has been identified at this time. Any new policy recommendations relating to domain registration and use disputes might implicate or affect ICANN's Uniform Domain-Name Dispute Resolution Policy (UDRP), which sets forth the terms and conditions in connection with domain registration and use disputes between registrants and any party other than the registrar.

8 Discussion of possible directions

ICANN Staff research shows that a substantial number of registries and a representative sample of registrars have specific policies in place that address abuse or allow for the take down of a domain name. The research compiled in this report does suggest that:

- There is no uniform approach by registries / registrars to address abuse.
- Based on the use of terms evident in this research, there appears to be no universally accepted definition of what constitutes abuse.
- Many registry agreements explicitly allow registries to take down or terminate domain names for abuse at the companies' discretion, Service providers routinely reserve the right to exercise their best judgement and take action when necessary, especially in an environment where new threats and forms of abuse frequently arise.
- There are a number of registries that do not have any provisions that deal with abuse. However, this does not necessarily mean that they do not deal with complaints of domain name abuse when they arise. Further research would be needed to determine if and how abuse is dealt with in those registries that do not have any specific provisions in place.
- It should be emphasised that this report does not identify how these registration abuse provisions are adhered to, are implemented in practice or deemed effective in addressing registration abuse.

Based on these findings, there may be benefits to establishing a consistent framework or definition of registration abuse that is applicable across ICANN accredited registries and registrars. In addition, certain providers may define acceptable use policies based on unique or relevant aspects of the services they offer. In examining the possibility of establishing a uniform or consistent framework, it would be useful to understand better whether registries have unique requirements that may call for differing approaches and definitions. Any new framework and/or definition of registration abuse should also be flexible enough to deal with the rapid changing environment in which registration abuse develops and takes place. Staff suggests that before policy changes are considered, it would be useful to understand if registration abuses are occurring that might be curtailed or better addressed if consistent registration abuse policies were established.

9 Staff Recommendation

Based on Staff's research to-date in preparing this report, we suggest that the Council consider the following next steps:

9.1 Review and Evaluate Findings

A first step would be for the GNSO Council to review and evaluate the findings, taking into account that this report provides an overview of registration abuse provisions, but does not analyse how these provisions are implemented in practice and whether they are deemed effective in addressing registration abuse.

9.2 Identify specific policy issues

Following the review and evaluation of the findings, the GNSO Council would need to determine whether there are specific policy issues regarding registration abuse. As part of this determination it would be helpful to define the specific type(s) of abuse of concern, especially distinguishing between registration abuse and other types of abuse if relevant.

9.3 Need for further research

As part of the previous two steps, ICANN Staff would recommend that the GNSO Council determines where further research may be needed – e.g. is lack of uniformity a substantial problem, how effective are current registration abuse provisions in addressing abuse in practice, is an initial review or analysis of the UDRP required?

Annex A – GNSO Request for Issues Report on Registrant Abuse Policies

This annex reproduces in full the request for an issues report sent by the GNSO Council:

Motion proposing an Issues Report on aspects of Registry-Registrar Agreements

Whereas:

1. ICANN's mission is to ensure the security and stability of the DNS, and to develop policy reasonably related to that mission.

2. Various forms of DNS abuse, in isolation and/or in the aggregate, cause a less secure and stable DNS.

3. Some of ICANN's gTLD registry agreements and appended registry-registrar agreements contain a provision such as Section 3.6.5 of the.info Registry Agreement, Appendix 8 : 3.6.5. (Registrars) acknowledge and agree that Afilias reserves the right to deny, cancel or transfer any registration or transaction, or place any domain name(s) on registry lock, hold or similar status, that it deems necessary, in its discretion; (1) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of Afilias, as well as its affiliates, subsidiaries, officers, directors, and employees; (4) per the terms of the registration agreement or (5) to correct mistakes made by Afilias or any Registrar in connection with a domain name registration. Afilias also reserves the right to place upon registry lock, hold or similar status a domain name during resolution of a dispute.

4. Afilias, the dotInfo Registry Operator, per its recent RSTEP request, has sought to clarify and implement its specific abusive registration policy with respect to this provision. This request has been approved by ICANN.

5. Some of ICANN's gTLD registry agreements, notably the Verisign contracts for .com and .net, have no such provision. Other gTLD registry agreements do contain such provision, but the registry operators have not developed or have inconsistently developed abusive registration policies.

The GNSO Council resolves to request an Issues Report from ICANN Staff within 30 days with respect to the following:

1. To identify and describe the various provisions in existing and previous gTLD registry and registry-registrar agreements which relate to contracting parties' ability to take action in response to abuse.

2. To identify and describe various provisions in a representative sampling of gTLD registration agreements which relate to contracting parties' and/or registrants rights and obligations with respect to abuse.

3. To identify and describe any previous discussion in ICANN fora which substantively pertains to provisions of this nature in any of these agreements.

4. To request an opinion of ICANN Staff as to which aspects of registration abuse policies as discussed above may be within the scope of GNSO policy development.

Annex B - .INFO Abusive Domain Use Policy

The following policy ("Abusive Domain Use Policy") is announced pursuant to section 3.5.2 of the Registry-Registrar Agreement ("RRA") in effect between Afilias and each of its Registrars, and is effective upon thirty days' notice by Afilias to Registrars.

Abusive use(s) of .INFO domain names should not be tolerated. The nature of such abuses creates security and stability issues for the registry, registrars and registrants, as well as for users of the Internet in general.

Afilias defines abusive use as the wrong or excessive use of power, position or ability, and includes, without limitation, the following:

1 Illegal or fraudulent actions;
2 Spam: The use of electronic messaging systems to send unsolicited bulk messages. The term applies to e-mail spam and similar abuses such as instant messaging spam, mobile messaging spam, and the spamming of Web sites and Internet forums. An example, for purposes of illustration, would be the use of e- mail in denial-of-service attacks;
3 Phishing: The use of counterfeit Web pages that are designed to trick recipients into divulging sensitive data such as usernames, passwords, or financial data;
4 Pharming: The redirecting of unknowing users to fraudulent sites or services, typically through DNS hijacking or poisoning;
5 Willful distribution of malware: The dissemination of software designed to infiltrate or damage a computer system without the owner's informed consent. Examples include, without limitation, computer viruses, worms, keyloggers, and trojan horses;
6 Fast flux hosting: Use of fast-flux techniques to disguise the location of Web sites or other Internet services, or to avoid detection and mitigation efforts, or to host illegal activities. Fast-flux techniques use DNS to frequently change the location on the Internet to which the domain name of an Internet host or name server resolves. Fast flux hosting may be used only with prior permission of Afilias;
7 Botnet command and control: Services run on a domain name that are used to control a collection of compromised computers or "zombies," or to direct denial- of-service attacks

(DDoS attacks);

8 Distribution of child pornography; and

9 Illegal Access to Other Computers or Networks: Illegally accessing computers, accounts, or networks belonging to another party, or attempting to penetrate security measures of another individual's system (often known as "hacking"). Also, any activity that might be used as a precursor to an attempted system penetration (e.g., port scan, stealth scan, or other information gathering activity).

Pursuant to Section 3.6.5 of the RRA, Afilias reserves the right to deny, cancel or transfer any registration or transaction, or place any domain name(s) on registry lock, hold or similar status, that it deems necessary, in its discretion; (1) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of Afilias, as well as its affiliates, subsidiaries, officers, directors, and employees; (4) per the terms of the registration agreement or (5) to correct mistakes made by Afilias or any Registrar in connection with a domain name registration. Afilias also reserves the right to place upon registry lock, hold or similar status a domain name during resolution of a dispute. Abusive uses, as defined above, undertaken with respect to .INFO domain names shall give rise to the right of Afilias to take such actions under Section 3.6.5 of the RRA in its sole discretion.