

ICANN Proposed Implementation of SubPro Recommendation 36.4 re: Fraudulent and Deceptive Practices

13 May 2025

Below is the text of Recommendation 36.4 from the SubPro Final Report. It is color coded to map out how ICANN has proposed to implement each piece of the policy recommendation.

Recommendation 36.4 from SubPro Final Report

ICANN must add a contractual provision stating that the registry operator will not engage in fraudulent or deceptive practices. In the event that ICANN receives an order from a court that a registry has engaged in fraudulent or deceptive practices, ICANN may issue a notice of breach for such practices and allow the registry to cure such breach in accordance with the Registry Agreement. Further, in the event that there is a credible allegation by any third party of fraudulent or deceptive practices, other than as set forth in above, ICANN may, at its discretion, either commence dispute resolution actions under the Registry Agreement (Currently Article 5 of the Registry Agreement), or appoint a panel under the PICDRP. For the purposes of a credible claim of fraudulent or deceptive practices the reporter (as defined by the PICDRP) must only specifically state the grounds of the alleged non-compliance, but not that it personally has been harmed as a result of the registry operator's act or omission.

Proposed Implementation

New subsection (e) of Specification 11, Section 3

Registry Operator shall not engage in the following fraudulent or deceptive business practices in performing any Critical Function under this Agreement for the TLD:

- i. Making false or misleading statements about a Critical Function and the false or misleading statement is material;
- ii. Implementing any Critical Function within the TLD with the effect of circumventing requirements under this Agreement or ICANN Consensus or Temporary Policies;
- iii. Using deceptive advertising or marketing practices concerning the performance of Critical Functions; or
- iv. Any other fraudulent or deceptive conduct that ICANN determines in its discretion based on sufficient evidence is a threat to the Security and Stability of Registry Services, Critical Functions, the Internet, or the DNS.

A PIC report filed by a reporter regarding this section 3.e. alleging actual harm as a result of noncompliance with this section shall not fail the preliminary review under the PICDRP solely because the reporter does not claim that it has been personally harmed.

New subsection (iii) of Section 4.3(f)

ICANN may, upon notice to Registry Operator, terminate this Agreement if...(iii) the Registry Operator is determined by a court of competent jurisdiction or by an arbitrator to have

committed fraud or deceptive practices in the provision of Registry Services under this Agreement for the TLD, or is the subject of a judicial or arbitral determination that ICANN reasonably deems as the substantive equivalent.