



ICANN

Registration Abuse Policies

- CBUC Position
Statement -

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16 Mar 2010

**Commercial & Business
Users Constituency
GNSO//CSG//CBUC**

Work Product Links:

This position statement will reference the Registration Abuse Policy Working Group's Initial Report and other resources:

[Initial Report](#)

[Supporting Presentation](#)

[RAP WG Mailing](#)

[RAP WG Social Text](#)

Position Statement Summary:

The Commercial & Business Users Constituency (CBUC) maintains the following position relating to the efforts of the Registration Abuse Policies Working Group (RAP WG), a Pre-PDP, and its subsequent Initial Report. The CBUC supports most recommendations as outlined in the Initial Report, and only offer a few suggestions for improvement.

Agree	✓
Agree & Offer Suggestion	⚠
Disagree & Offer Suggestion	✗

RAP Recommendation	CBUC Concurrence
Abuse Definition	✓
Registration Abuse vs. Use Abuse	✗
Cybersquatting (R1) – PDP current state of the UDRP	✓
Cybersquatting (R2) – PDP new gTLD RPMs	⚠
Front Running (R1) - No PDP	✓
Gripe Sites (R1) - Revisit UDRP	✗
Gripe Sites (R2) - Best Practice to Restrict Registration	✓
Fake Renewal Notices (R1) - Refer to Compliance	✓
Fake Renewal Notices (R2) - PDP	✓
Domain Kiting / Tasting (R1) – No PDP	✓
Malicious Use of Domains (R1) – Best Practices	⚠
WhoIS Access (R1) – WhoIS Research	✓
WhoIS Access (R2) – Publish WhoIS Accessibility Data	✓
Uniformity of Contracts (R1)	⚠
Meta Issue – Uniformity of Reporting (R1)	✓
Meta Issue – Best Practices (R2)	✓

The CBUC recognize the PDP recommendations will require significant effort and must be appropriately sized and prioritized within the GNSO demand schedule. With that said, forward momentum and sense of urgency must not fall by the way side whereby these issues might never be addressed.

Position Statement Details:

First and foremost, the CBUC wishes to thank the efforts of the RAP team and we commend the hard work producing the results for which the CBUC will take position on.


The Commercial & Business Users Constituency (CBUC) maintains the following position relating to the efforts of the Registration Abuse Policies Working Group (RAP WG), a Pre-PDP, and its Initial Report. The CBUC supports most recommendations as outlined in the Initial Report, and only offer a few suggestions for improvement. Most importantly, the resolution of the Registration Abuse vs. Use Abuse debate is required and should be completed prior to the final report RAP, as this may have direct influence on consensus positions.

CBUC Members of RAP WG:



Members:	Affiliation:
Mike Rodenbaugh (Council Liaison)	Rodenbaugh Law
Mike O'Conner	The O'Connor Company of St Paul
Martin Sutton	HSBC
Phil Corwin	Internet Commerce Association
Berry Cobb **	Infinity Portals LLC


** Position Statement Author



CBUC Positions:



RAP Recommendation	CBUC Concurrence	CBUC Position
Abuse is an action that: a. Causes actual and substantial harm, or is a material predicate of such harm, and b. Is illegal or illegitimate, or is otherwise considered contrary to the intention and design of a stated legitimate purpose, if such purpose is disclosed.		CBUC agrees with the definition as stated in the Initial Report.


RAP Recommendation	CBUC Concurrence	CBUC Position
Registration Abuse vs. Use Abuse	✘	<p>Suggestion: Resolve this debate with the GNSO Council, other Constituencies, and ICANN Staff as appropriate. Enhance the section of the Initial Report to define this as a recommendation slot and denote the consensus outcome by RAP WG members.</p> <p>Rationale: The debate of this issue began as the very first topic within the RAP Drafting Team and has yet to conclude with finality. It influences research and subsequent recommendations made by the RAP WG, <u>especially regarding topics of mitigating Malicious Abuse and Uniformity of Contracts</u>. The CBUC takes the position that a difference between Registration Abuse and Use Abuse cannot be reasonably expressed. A domain name cannot be used unless it is registered; therefore any abuse of a registered name is registration abuse. Any 'difference' certainly has not been developed from the WG thus far. The resolution of this topic is not only critical to RAP outcomes but the outcomes of other PDP efforts across the community.</p>


RAP Recommendation	CBUC Concurrence	CBUC Position
<p>Cybersquatting (R1) – The RAPWG recommends the initiation of a Policy Development Process by requesting an Issues Report to investigate the current state of the UDRP, and consider revisions to address cybersquatting if appropriate. This effort should consider:</p> <ul style="list-style-type: none"> • How the UDRP has addressed the problem of cybersquatting to date, and any insufficiencies/inequalities associated with the process. • Whether the definition of cybersquatting inherent within the existing UDRP language needs to be reviewed or updated. 		<p>The CBUC takes notice to the Unanimous Consensus and also supports this recommendation.</p>
<p>Cybersquatting (R2) –</p> <p>VIEW A: The RAPWG recommends the initiation of a Policy Development Process by requesting an Issues Report to investigate the appropriateness and effectiveness of how any Rights Protection Mechanisms that are developed elsewhere in the community (e.g. the New gTLD program) can be applied to the problem of cybersquatting in the current gTLD space.</p> <p>VIEW B: The initiation of such a process is premature; the effectiveness and consequences of the Rights Protection Mechanisms proposed for the new TLDs is unknown. Discussion of RPMs should continue via the New TLD program. Experience with them should be gained before considering their appropriate relation (if any) to the existing TLD space.</p>		<p>Suggestion: The CBUC supports View A, noting that this recommendation is near evenly divided among the RAP WG</p> <p>Rationale: While the IRT & STI have advanced the topic of RPMs for new gTLDs, recent comments by the ICANN Board suggest that consensus built from these groups is an indication that all issues have been resolved. This is not the case, and further investigations are warranted. The community has an opportunity to properly address the issues around RPM, before such gTLD launch. Therefore it is imperative that the recommendation of a PDP be put forth to bring finality.</p>



RAP Recommendation	CBUC Concurrence	CBUC Position
<p>Front Running (R1) - It is unclear to what extent front-running happens, and the RAPWG does not recommend policy development at this time. The RAPWG suggests that the Council monitor the issue and consider next steps if conditions warrant.</p>		<p>The CBUC recognizes the Unanimous Consensus and equally supports the RAP WG's recommendation</p>


RAP Recommendation	CBUC Concurrence	CBUC Position
<p>Gripe Sites (R1) –</p> <p>VIEW A: Make no recommendation</p> <p>VIEW B: The URDP should be revisited to determine what substantive policy changes, if any, would be necessary to address any inconsistencies relating to decisions on “gripe” names and to provide for fast track substantive and procedural mechanisms in the event of the registration of deceptive domain names that mislead adults or children to objectionable sites.</p>		<p>Suggestion: The CBUC takes note of minimal support by RAP members, but we recommend that View A be stricken as an option and modified where View B is presented as a viable solution to address inconsistencies of UDRP rulings regarding Gripe Sites.</p> <p>Rationale: The CBUC understands that any policy developed easily treads near free speech. As such, the CBUC will not support policy that threatens it. However, UDRP policy does exist in its current forms and the CBUC supports enhancements when warranted. Appropriate changes will further promote predictability and further promote expected outcomes.</p>
<p>Gripe Sites (R2) –</p> <p>VIEW A: Turn down a proposed recommendation that registries develop best practices to restrict the registration of offensive strings.</p> <p>VIEW B: Registries should consider developing internal best practice policies that would restrict the registration of offensive strings in order to mitigate the potential harm to consumers and children.</p>		<p>The CBUC supports the recommendation of View A acknowledging the rough consensus among the RAP team. The CBUC believes that if R1 - View B were addressed above, this will create a clear path for consistency to develop and negate this recommendation.</p>



RAP Recommendation	CBUC Concurrence	CBUC Position
<p>Fake Renewal Notices (R1) –</p> <p>VIEW A: The RAPWG recommends that the GNSO refer this issue to ICANN’s Contractual Compliance department for possible enforcement action, including investigation of misuse of WHOIS data.</p> <p>VIEW B: There does not seem to be any policy that Compliance could enforce</p>		<p>The CBUC takes notice to the Strong Consensus and supports View A too. The CBUC also recognizes that the issue of “Slamming” should be further explored and perhaps separated as a standalone topic and subsequent recommendation. Recent data discovery has surfaced, and CBUC participants on the RAP will suggest further exploration when the RAP reconvenes.</p>
<p>Fake Renewal Notices (R2) – The following recommendation is conditional. The WG would like to learn the ICANN Compliance Department’s opinions regarding Recommendation #1 above, and the WG will further discuss Recommendation 2 looking forward to the WG’s Final Report. The RAPWG recommends the initiation of a Policy Development Process by requesting an Issues Report to investigate fake renewal notices.</p>		<p>The CBUC takes notice to the Unanimous Consensus and also supports this recommendation.</p>

RAP Recommendation	CBUC Concurrence	CBUC Position
<p>Domain Kiting / Tasting (R1) – It is unclear to what extent domain kiting happens, and the RAPWG does not recommend policy development at this time. The RAPWG suggests that the Council monitor the issue (in conjunction with ongoing reviews of domain-tasting), and consider next steps if conditions warrant.</p>		<p>The CBUC takes notice to the Unanimous Consensus and also supports this recommendation.</p>

RAP Recommendation	CBUC Concurrence	CBUC Position
<p>Malicious Use of Domains (R1) –</p> <p>VIEW A: The RAPWG recommends the creation of nonbinding best practices to help registrars and registries address the illicit use of domain names. This effort should be supported by ICANN resources, and should be created via a community process such as a working or advisory group while also taking the need for security and trust into consideration. The effort should consider (but not be limited to) these subjects:</p> <ul style="list-style-type: none"> • Practices for identifying stolen • Credentials • Practices for identifying and investigating common forms of malicious use (such as malware and phishing) • Creating anti-abuse terms of service for inclusion in Registrar-Registrant agreements, and for use by TLD operators. • Identifying compromised/hacked domains versus domain registered by abusers • Practices for suspending domain names • Account access security management • Security resources of use or interest to registrars and registries • Survey registrars and registries to determine practices being used, and their adoption rates. <p>VIEW B: Uses of domain names unrelated to registration issues are an area in which ICANN can impose mandatory practices upon Contracted parties.</p>		<p>Suggestion: The CBUC takes notice to the Unanimous Consensus and also supports this recommendation.</p> <p>Rationale: The CBUC notes that this recommendation is tightly coupled to the issue of separation between Registration Abuse and Use Abuse. As per the CBUC position above, this must be resolved. The Unanimous Consensus by the RAP WG confirms that everyone recognizes Malicious Use is a major issue that requires resolution. The inclusion of “Best Practices” as a platform to seek resolution only indicates that members are taking anything they can get with respect to resolution. The problem is that no formal platform to disseminate best practices exists today. So the questions to be answered is should a PDP be formed as the proper channel to built an appropriate platform to address Malicious Use.</p>

RAP Recommendation	CBUC Concurrence	CBUC Position
<p>WhoIS Access (R1) – The GNSO should determine what additional research and processes may be needed to ensure that WHOIS data is accessible in an appropriately reliable, enforceable, and consistent fashion. The GNSO Council should consider how such might be related to other WHOIS efforts, such as the upcoming review of WHOIS policy and implementation required by ICANN’s new Affirmation of Commitments.</p>		<p>The CBUC takes notice to the Unanimous Consensus and also supports this recommendation.</p>
<p>WhoIS Access (R2) – The GNSO should request that the ICANN Compliance Department publish more data about WHOIS accessibility, on at least an annual basis. This data should include a) the number of registrars that show a pattern of unreasonable restriction of access to their port 43 WHOIS servers, and b) the results of an annual compliance audit of compliance with all contractual WHOIS access obligations.</p>		<p>The CBUC takes notice to the Unanimous Consensus and also supports this recommendation.</p>

RAP Recommendation	CBUC Concurrence	CBUC Position
<p>Uniformity of Contracts (R1)</p> <p>VIEW A: The RAPWG recommends the creation of an Issues Report to evaluate whether a minimum baseline of registration abuse provisions should be created for all in-scope ICANN agreements, and if created, how such language would be structured to address the most common forms of registration abuse.</p> <p>VIEW B: Opposed to the recommendation for an Issues Report as expressed in view A</p>		<p>Suggestion: The CBUC sides with View A, noting that this recommendation shows strong support among the RAP WG.</p> <p>Rationale: The CBUC recognizes that some market participants fail to perform adequately with respect to mitigating or preventing abuse. Therefore, it is only through minimum abuse contract baselines combined with adequate indemnification is the start of many viable solution to provide a more cohesive and unified front in which to combat abuse.</p>

RAP Recommendation	CBUC Concurrency	CBUC Position
<p>Meta Issue – Uniformity of Reporting (R1)</p> <p>The RAPWG recommends that the GNSO, and the larger ICANN community in general, create and support uniform reporting processes.</p>		<p>The CBUC takes notice to the Unanimous Consensus and also supports this recommendation.</p>
<p>Meta Issue – Best Practices (R2)</p> <p>The RAPWG recommends that the GNSO, and the larger ICANN community in general, create and support structured, funded mechanisms for the collection and maintenance of best practices.</p>		<p>The CBUC takes notice to the Unanimous Consensus and also supports this recommendation.</p>