
ICANN86 Seville | PF – GNSO: DNS Abuse Mitigation PDP 1 (2 of 4)
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TERRI AGNEW

Hello and welcome to the DNS Abuse Mitigation PDP 1 Working Group Session 2 of 4. Please note that this session is being recorded and is governed by the ICANN Expected Standards of Behavior, the ICANN Community Anti-Harassment Policy, and the ICANN Community Participant Code of Conduct Concerning Statements of Interest.

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PAUL MCGRADY

Thank you, Terri. Everybody, welcome to session two. A couple of things that are table setting. Just a reminder of what I put in the chat from the last session, which is, yes, this is a working group session, so we are not going to be doing a bunch of community

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updates and review. On the other hand, this is also a public ICANN meeting.

So, if you are not a member of the working group and you would like to say something, get yourself into the queue or come to the microphone if you don't have the session up. So, let's go ahead and jump in. Our agenda is to do a review of the preliminary recommendation language for charter questions one through seven.

And then we will do a, that's going to be a quick chair overview for the first five minutes to sort of set the table for where we are. And then we will discuss some changes and feedbacks on those recommendations. We are also, I think, going to spend a few minutes in this session.

And I don't know if that's up next or not, but we wanted to talk for a moment about the difference between recommendation and implementation guidance, because I think we got a little murky in the last session on that, so we'll do some of that. Marc, your hand's up. You have a comment on the agenda?

MARC TRACHTENBERG

I just had a procedural question. I think when we discussed the changes in feedback in the preliminary recs, that's like the can't live with that document, right?

PAUL MCGRADY

We're going to be taking a look at that, although we will have more time in the week on can't live with.

MARC TRACHTENBERG

Something I just wanted to ask procedurally about that document is it seems like that document changed over time, the actual text in the recommendations, and I think that people who went in, I think because the document, the default was edit and not suggest, that people went in and the text actually changed over time.

Because when we went in, when we looked at different times, it said different things. And so, I just want to make sure that we can check on that because it seemed like it was maybe a moving target in that regard. And so, some of the comments we wanted to make at some times seemed not necessary at other times.

So, one example is in the preliminary recommendation rationale, it said something about only if the domain name is used solely for DNS abuse. That was in the document at some point, and then now it's not in that document. And so, is there a way we can check to see what else changed over time since it was originally posted to make sure that everyone was responding to the same text?

PAUL MCGRADY

So, I don't know the answer to that. Staff will take a look at that, but for purposes of our working session today, let's just work on the text we have, but if they can and go back and see if there's some historic way to do that.

MARC TRACHTENBERG

Right. I'm not saying we don't do it. I just, people could look at that because that way there may be other comments that people wanted to make and didn't make in time because when they looked at the documents, maybe that comment wasn't appropriate because the text was different.

PAUL MCGRADY

Yeah. So, I want to back out one thing that you're saying though, because if you have new comments or wish to withdraw a comment, it's in time because we're not at final review. We're still workshopping the language. Yeah. All right. Thanks, Marc. Okay. A quick overview of recommendations 1, 2, 3, 4, 5, 6, 7. All right.

So, preliminary recommendation number one, it has to do with the trigger. And that is tied to 3.18.2 of the RAA, actionable evidence, and it does not relate to compromised domain names, or the ADC investigation. Registrars must perform a reasonable investigation to find the associated domain names involved in DNS abuse.

Preliminary recommendation number three, reasonable investigation, the registrar to review information reasonably. This says available, but I think there's some comments that we may end up evolving that to the word accessible. So, stay tuned on that.

On reasonably available and having to do -- I'm sorry, registrars review information reasonably either available or accessible.

Steph, maybe you can help me. What am I missing on IG? I can't even keep up with my own acronyms.

UNKNOWN SPEAKER

Implementation guidance.

PAUL MCGRADY

Implementation guidance. Thank you. On reasonably available and what reasonably available or accessible means and various reseller models. Preliminary recommendation four, determining association. There's flexibility and registrar model to determine association. Implementation guidance on association indicators. And let's move along. Theodore, I see your hand. Marc, is that an old hand or a new one? Okay. Preliminary recommendation five, safeguards for ADC investigation.

Registrar must apply reasonable criteria when determining association, such as proportionality and data minimalization. The preliminary record timeline for ADC. So, far, we have registrar must initiate and conduct ADC promptly. There are other concepts out there that we're still working through, but that's kind of a congealing point.

And then preliminary recommendation number seven sits at topics for consideration for GNSO Council. We will send back some things from this because we came up with some ideas that are out of scope. So, Council will consider two issues or follow-up steps or

PDPs, including recourse mechanisms and transparency and mitigation actions.

And I think that we have preliminary recommendation eight. It's to be developed based upon yet the prior discussion and today, same for nine based upon the straw man. All right. So, we're going to have a discussion now on changes and feedback on preliminary recs. All right. So, as we go through these, here are the questions that we'd like for you to answer.

Are the current recommendations solving the issue described in the charter? Can the recommendations be supported by Council? Are the recommendations Board ready? Are the recommendations implementable? Can my group live with this proposed recommendation or language? And are recommendations balanced? So, those are things to keep in mind.

I want to talk a bit about what is cannot live with. Okay, so that means that we're looking at substantive changes to the drafts. There we go. All right. Has the working group already discussed this input, if we want to provide previously, and what was the feedback? So, those are the what is things we can't live with. We can't live with their substance and are we discussed.

So, what is can't live with but prefer this to change. Changes we would agree with the policy intent goal but would add more clarification or different terms. In other words, if there's a tweaking to make it more or less clear, that's a can live with but would prefer

this change, can't live with is essentially, we would rather have no policy than to have this thing that's in front of us.

The poodle, this is Sister. Sister is 14 years old. She has a cousin Simba and they both weigh nine pounds and they are my wife's poodles. I do not like them. They do not like me. But if I came home and I said to her, I can't live with these poodles anymore, then I would have to find a small apartment because she's not giving them up.

So, as you think to yourself what you can and can't live with and you would like a visual reminder, just think of Sister and whether or not you can really live with it. And so, you will get a prompt at the end of this session. We are here together. Tomorrow is a big Constituency Day. Take these things back to your constituency and ask them, is this really something that we can't live with?

Would we rather have no policy than have this, because that's what cannot live with means. If you have changes you would like to see, that's in the second category. We can live with it, but how about this? How about that? That's iteration. We're going to be doing iteration.

We're going to be doing grammar cleanup. We're going to be doing, to borrow a phrase from Steve, pressure testing for unforeseen circumstances. We're not at that point yet, and so, we're not talking about those things. We're talking about the big things. All right. I hope that's helpful.

All right. Let us move on and talk about implementation guidance. We threw this slide together quickly because there was a question about the difference between Policy, capital P, and IG. I now know what IG means. I thought it meant Instagram, and I was trying to figure out what that meant in our context, but implementation guidance, and why implementation guidance is a great place for things that you really like, but are maybe too specific or whatever, for the general policy language, which we need to be applied flexibly.

So, the rationale for the implementation guidance has developed over time in our process, in that some cases a working group wants to recommend that the contracted parties must take some action, and in addition, the working group generally shares a view about the details of how, why, et cetera, that that action must happen.

And so, that's where we get granular in implementation guidance. We don't want to be granular at the policy level. So, as the how, why, et cetera, is viewed by the working group as the preferred implementation approach or path envisioned by the working group based on information available to them, so this couldn't be included in implementation guidance instead of at a policy recommendation level to provide some flexibility in the implementation process with the understanding that in implementing the most practical operational legal et cetera issues could be identified that could impact a specific implementation approach.

So, however, the guidance is duly taken into account, it's not policy, but it's taken into account during the implementation process and should be followed unless there's a clear reason why the implementation guidance should be deviated from. In this case, the rationale would be shared with the IRT for their input. In other words, some things are overly prescriptive. We may want to put them into implementation guidance.

We may want to couch them in a way that says something like absent extraordinary circumstances or ordinarily you would do this, that, or the other. We've already talked at length today about not boxing ICANN Compliance into a prescriptive mode of things that they, today's threats trying to be applied to tomorrow's threats or today's reporting format being applied to tomorrow's reporting format, those kinds of things.

And so, as the working group evolves, you will start to see implementation guidance popping up as a means of capturing those things. Those of you who've worked in PDPs before will know it's common. That's usually how we do things. It's a great pressure valve on changing things from a zero and a one to more optionality. Any questions on that before we go? All right. Preliminary Recommendation one.

We're going to take about seven minutes per topic because we've got nine of them. And so, if we get stuck, we'll pick up speed in some of the others, but hopefully we don't get too stuck. So, Preliminary Recommendation 1. So, let us see here. These are just,

I think, notes in advance. So, note one, for the avoidance of doubt, this requirement does not extend to compromised domains. That's something that we've all agreed on. It's only maliciously registered.

However, there is no common definition of compromised domain names in the RAA. And I think that we should consider establishing a baseline understanding for compromised domain to help implementation and compliance. So, that's a glossary item. I think that we have some proposed definitions by these registry or registrar working group.

Compromised domain means a “domain name that was registered for legitimate purposes, but is subsequently exploited or controlled by an unauthorized party to conduct DNS abuse without the knowledge, authorization, or participation of the registrant.” Unless there are objections to that definition or enhancements, I think we can move that to the glossary.

Anybody have enhancements, objections? I think that's what we're talking about. All right, we've got two takers, Marc and then Volker.

MARC TRACHTENBERG

I don't know if I have such an issue with the definition. I'm just looking at it for the first time and wondering how, in this context, the registrar is going to know whether the domain name was legitimately or registered for legitimate purpose and then used for DNS abuse without the knowledge or participant of the registrant.

How are they going to know in this context whether the policy applies or not? You have the abuse report, you have some actionable evidence of DNS abuse, the registrar looks at it determines the domain name was used for DNS abuse but they don't know what the original intent was at the time. So, then how do you know whether the domain name falls under the ADC obligation?

PAUL MCGRADY

Okay. Volker.

VOLKER GREIMANN

Yes, thank you. Volker Greimann speaking for the record. And to Marc's point real quick, sometimes we don't, sometimes we need to guess. But my issue with this is that it's often not the domain that's being abused. This focuses directly on the domain, but sometimes compromised domain means a domain name where the hosting is compromised and the domain itself is still being used for that legitimate purpose or it's offering a service that is legitimate, but the service is being abused, but the domain is actually not the abusive part, it's the subdomain that's abusive or it's the hosting that's abusive or it's something else. So, that should be covered.

PAU MCGRADY

All right. Gabriel.

GABRIEL ANDREWS

Yeah, I actually have a hand up for the trigger language, but if it's premature to speak to that and you're only talking about this definition, I'll hold.

PAUL MCGRADY

Great. Come back to it though, Gabriel. Please, Reg.

REG LEVY

Yeah, I think I'm broadly okay with this. As Volker said, it's not always just the domain that's being exploited but parts of the domain. I think that would still kind of fall into this, so I'm again broadly okay with this. With regard to the intent of the registrant, yeah, you're right, we don't know that, but we make those determinations right now.

I think it's fine to say what's being said here because it leaves it open enough to be like, no, that seemed like a legitimate purchase when it was made. And six years later, something happened. As opposed to that was facebook-exploit-com.cloud, and that was six years ago and now it's being compromised. That was never a legitimate registration. So, it's going to kind of come down to the gut feel of the registrar and I'm fine with that.

PAUL MCGRADY

Thanks, Reg. And also, I'd like to point out that the word intent is not in here, we've read it in, but it's not there. It's knowledge,

authorization, or participation of the registrant. So, what we're really asking is, how do we know if we're being lied to by our customers? And it's hard to know whether or not you're being lied to by your customers.

The courts don't even know. That's why we created perjury as a crime. And so, like, you can get lied to all day. No one's asking anybody in this definition to decipher what the intent was. It's just knowledge, authorization, or participation. All right, off to Brian.

BRIAN CIMBOLIC

Thanks, Paul. Marc, I get your point, but I just want to note under the current kind of system in place under 3.18.2, registrars really have to make that determination already because it's the difference of if it's compromised, then under the collateral damage language in the RAA, then they don't have to act. It doesn't use the term compromised domains, but the advisory does. So, it's really just kind of an extension of the status quo. The registrars are already having to make these determinations.

PAUL MCGRADY

All right. We are back to Marc.

MARC TRACHTENBERG

Okay. So, I just want to acknowledge those are good points that both Brian and Reg made. And so, I guess the only question is, now, does there need to be some sort of obligation for the registrar to record whether they didn't do the ADC because they determined it

was a compromised domain? That information that should or needs to be captured.

PAUL MCGRADY

We're off to Reg.

REG LEVY

No, I don't think so. I like the definition that we already have that Brian dropped into chat. "When an otherwise legitimate or benign domain name is used as a vector for DNS abuse without the knowledge or consent of the registrant."

So, given that we already have language, I would prefer using language that we already have and not recreating definitions for something just because then we have two definitions out there and one means one thing for one policy and one means a different thing for a different policy.

PAUL MCGRADY

Got you. I don't want to spend too much more time on this. Let's put both this and the definition that Brian uncovered into the collaboration document, and let's work on that offline. But it's good. At least we are going to define it. That's the main takeaway. Terrific. Okay. The next thing on Recommendation 1 was a suggestion.

So, we're going through, we're talking about the inputs that we received. There was a suggestion to include a rationale

clarification that the trigger for the ADC should not delay mitigation action on already existing obligations. In other words, I would have mitigated that DNS abuse, but I was busy running an ADC. And so, we have a cue, Gabriel, and then Volker.

GABRIEL ANDREWS

I think I actually might lower my hand. So, just clarification then, Paul, are you going to return back to the document itself and the comments and margin there, or are you already just going by only the slides from this point forward?

PAUL MCGRADY

Yeah, we're pulling out things into the slides rather than trying to work off the collaboration document. The collaboration document really is more of an offline thing. It's messy. And so, I'm trying to pull topics out.

GABRIEL ANDREWS

Okay, because I have a topic to pull out then, and I'm not sure if you've captured it or not.

PAUL MCGRADY

I am assured that it is on the next slide. Whatever is in your mind, I'm able to decipher your intent, and if it's not, you'll be given a chance. All right. Volker.

VOLKER GREIMANN

I like the direction that this is going. It's just missing a very important word. Those should not substantively delay mitigation because in many cases we conduct the ADC as part of the investigation. And even if it's just a millisecond of expanding that search, that's already a delay. So, those delays should be taken into account. So, the process should be there. It just shouldn't be unreasonable.

PAUL MCGRADY

Substantively delay.

VOLKER GREIMANN

Substantively, unreasonably, something like that.

PAUL MCGRADY

Okay, great. We'll capture that. I think that's important precision. Okay. We are moving on to the next slide, which will hopefully make Gabriel happy. We have a request from the GAC. So, the GAC would appreciate feedback from all PDP participants and particularly registrars on their understanding of how the current formulation of the text for question one, which focuses on evidence that a name is being used, would be interpreted in different scenarios regarding past and future abuse.

GAC provided three scenarios they will input from the working group on. I think that that it's almost its own call for mini public comment from people around this table. And so, this is your public service announcement asking the members of the working group

to get that information to the GAC. Gabriel, would you like to add your plus one or more content?

GABRIEL ANDREWS

Thank you, and thank you for having a slide on this. I think really this is an effort by us to not be obstacles by inserting language in can't live with, et cetera. And this is like a genuine good faith effort to address this topic and issue that I think we've raised in other contexts. But specifically with those examples in the margin, I think that they are examples of very strong evidence that an ADC should occur.

But if someone was being really pedantic, you might say, well, the domain isn't right now being used and we're hoping to get feedback that can help address in those situations whether or not there is shared consensus that ADC requirements should apply. Thank you.

PAUL MCGRADY

Thanks. It might be a classic example of something that shows up in the implementation guidance too. Right. Yeah. All right. Any other hands on this? All right. Going through and pulling out the topics for Recommendation 2. The rec notes the following, "A registrar must perform a reasonable investigation in order to determine whether or not associated domains are used for DNS Abuse per 3.18.2 of the RAA."

We got some feedback that was from our flash review, which turned out not to be all that flashy, if you guys remember. And the feedback was, review at least one association criteria. That phrase was removed as it might result in an ineffective policy and reviewing only one criteria is more likely to lead to unintentional erroneous association.

And so, that sort of narrowing factor was taken out of the current draft of preliminary recommendation two. I think this is more of an announcement, although I'm happy to take a cue on it. As you review preliminary recommendation number two and you say, oh, what changed? That's the main thing that changed. And that was based on feedback from the working group call. Reg, go ahead.

REG LEVY

Thank you. I'm really confused and a little bit concerned about the use of scare quotes for both reasonable investigation and associated domains throughout this document because it makes it sound like it's not a "reasonable investigation" because it should actually be a reasonable investigation. And similarly, that we're going to find associated domains, not "associated domains."

And it reads oddly throughout, especially since neither are really that defined. And I believe these notes are in the text as well. It would just read more clearly if a registrar must perform a reasonable investigation in order to determine rather than a

registrar must perform a “reasonable investigation” in order to determine.

PAUL MCGRADY:

Thanks. User friendliness is important. Yeah. All right. Be gone scare quotes. All right. Oh, Marc, go ahead.

MARC TRACHTENBERG

Could we just solve this problem by maybe defining the terms than using the defined terms?

PAUL MCGRADY

Some of them are. So, some of them are in the glossary. If there's something that's missing in the glossary and we think we need to define it to make the policy read better, more carefully, and make it more implementable, then I encourage people to suggest things in the glossary. All right. Moving on to items from recommendation number three. Oh, Thomas has something from the last one or a table setting for this one.

THOMAS RICKERT

No, no, I just wanted to jump in before you read the next one. I was not fast enough reviewing the, or taking another look at the document. On REC1, we said that the ADC should not hold up the train for mitigation action. And did we still have something in our report that it might be warranted to not mitigate if you do the ADC and you might otherwise warn the perpetrator?

That is a qualification that we discussed, that it may make sense to do the ADC first and check whether the registrant or the account holder has more domains in it, and you want to take them offline and lock them so that the criminal can't move them away and continue the abuse. Did we cover that somewhere? Honestly, I'm lost at the moment.

PAUL MCGRADY

Yeah, help me understand the question a little bit better. We tried to write the policy in a way that would allow the registrar to do that.

THOMAS RICKERT

So, my question is, does it allow for the registrar to suspend mitigation actions? Because it now reads that you should plow forward with mitigation action even if the ADC is taking place.

PAUL MCGRADY

I think because Volcker added a word, I think we're okay now substantively. I got the answer to that question right because two hands went down. All right. Preliminary recommendation number three. So, the recommendation notes a reasonable investigation without the square quote quotes. Buyer registrar must consist of reviewing information reasonably available to the registrar in the normal course of its operations to determine and so on.

So, based upon working group input, to account for the reseller models to conduct the ADC when necessary, the suggestion is to change language from reasonably available to reasonably

accessible. Any concerns about reasonably accessible? Okay, that's great. I thought we would spend 20 minutes on that, but we didn't. Yay, moving on.

Next up. On that three, the recommendation is the registrar will remain responsible for ensuring that a reasonable investigation is conducted as required by 3.12. This means the registrar is fully responsible for complying with all the RA requirements, including 3.18, even when it uses a reseller.

The registrar input suggestion is the registrar will remain responsible for all relevant contractual obligations as required by 3.12 of the RAA, which is a streamlined way of saying it. I think it says substantially the same thing. I personally think it says it better, but let's have a queue in case other people disagree. Marc, go ahead.

MARC TRACHTENBERG

The ADC is not in the RAA, though. And so, it should maybe say that registrar will remain responsible for all relevant obligations under the ADC policy, as opposed to just the RAA.

PAUL MCGRADY

Well, the ADC policy will become consensus policy and will become part of the RAA by its nature. Like there's not contractual amendments. It just becomes a policy. I mean, the contract will advance, but there's no separate function for that. Does that make sense? Once it's policy, then the registrars have to comply with it.

MARC TRACHTENBERG Yeah. I want to noodle on that more, but I understand what you're saying.

PAUL MCGRADY Yeah, for sure. Yeah. Okay. So, we will put in the revised sentence here, but we'll note it as stable but not final so that anybody that wants to noodle that can. Okay. Reg, go ahead.

REG LEVY The contract binds us to policy. So, by having this as policy, it is included by reference in the RRA. So, it is there.

PAUL MCGRADY Right. Volker.

VOLKER GREIMANN Yeah, absolutely what Reg said and what you said, Paul, the consensus policy is referenced in the contract and therefore it's part of what we have to do. If anybody feels better, I would have no objections, including just a reference in there, for example, will remain responsible for all relevant contractual obligations, including consensus policy as regarded as well. So, that would be probably an easy fix and everybody would feel better, but it wouldn't add anything really. It's just feel-good language, if that helps.

PAUL MCGRADY I'm for that. Marc, is that an old hand? Reg, is that an old hand? Okay.

MARC TRACHTENBERG It was an old hand, but I would say I agree with Volker's suggestion. I think that would seem to address it and just make it more clear and would not subjectively affect anything to the extent that it's already in the in the RAA, which would make people feel better. And part of this is just readability so that people don't have to look at 500 different documents.

PAUL MCGRADY Thanks, which is an important point for public comment. Right. Thomas.

THOMAS RICKERT I think if you want to make it shorter than the original note, then we can even let go of the last half sentence as required by 3.12 of the RAA.

PAUL MCGRADY Thanks. Okay, we'll evolve that to make that as streamlined as possible. All right. Lawrence, where are you?

the acts and emissions of its resellers downstream. And so, that seems to have been settled policy and contractually agreed to in the existing RRA. And we should use that as part of the foundational support for the implementation of this policy. So, I'm happy to put the reference in the chat. It's really helpful, I think.

PAUL MCGRADY

Here we go. We have Martina.

MARTINA BARBERO

Thank you very much, Paul. And it's a question again, sorry for asking so many questions, but indeed, we need to go back to the GAC and explain things. So, is there really a legal difference between reasonably available and reasonably accessible? Because that's a question that Rod also asked in the chat and just want to make sure that we can bring the right message to the GAC.

And I'm also asking because with my very European helmet, we don't have this language that's much more American contract language. So, if there is a difference, we need to be able to explain it to the GAC colleagues and then have them weigh in on this language.

PAUL MCGRADY

Thanks, Martina. Do we have a champion for accessible, reasonably accessible? I think it was a registrar concept. Thomas.

THOMAS RICKERT

Just reading it, I think the distinction is if it's available to you, it's on your desk. If it's accessible, you can reach over to somebody else. Exactly. So, if you are in the retail business, you might not have it on your hard drive if you wish, but you can reach out to someone who has it and get access to it.

PAUL MCGRADY

Thanks, Tomas. Reg.

REG LEVY

Yeah, something similar to that. I think this was asked for by Volker and I said that we can outsource the obligations to our resellers appropriately because it is reasonably accessible to us if we tell them, you do it. And then when ICANN comes to us and says, was this done? It is accessible because I can say, hey, you, who did it, give me that information, and they can. So, it's accessible in that way, but it's not available to me until I ask for it.

PAUL MCGRADY

Thanks, Reg. Volker.

VOLKER GREIMANN

That's one part. And there's a lot of information that's potentially available to us because it's somewhere in our database. But if our systems aren't built in a way that makes it easily retrievable, then that's not really accessible. If I have to ask a developer every time I

want a certain bit of information, then we probably leave the field of reasonableness. But I think this change makes that more clear.

PAUL MCGRADY

Nathalie.

NATHALIE PEREGRINE

Thanks. I'm just wondering if reasonable is defined anywhere.

PAUL MCGRADY

Yeah, I don't know that we've defined reasonable.

NATHALIE PEREGRINE

Because it comes up a lot, reasonable investigation, reasonable time frame, and what is reasonable time frame? 24 hours or a week? And reasonable investigation, is that I look for five minutes or I look beyond that?

PAUL MCGRADY

Yeah, so on the timeframes, that is not a reasonable timeframe. I think it's prompt is what the current thinking is. But again, reasonable to a certain extent will be in the eye of the ICANN compliance beholder you'll have to explain to, if you're a registrar, whether or not you are reasonable in complying with this. Brian, you may have some things to add that will save me.

BRIAN CIMBOLIC

Thanks, Paul. So, yeah, reasonable is a standard that's used routinely throughout the registry agreement and the registrar accreditation agreement. I think it's like 61 times between the two agreements. It's also the basis for the existing obligations on DNS abuse.

So, if you look at 3.18.2, the registrar has to take reasonable action. So, again, just in the spirit of sort of we have a system, we have a precedent. And so, if we're going to deviate from that, I think we need a clear articulation why reasonable is being used to enforce the DNS abuse amendments today.

And I think we heard from compliance that they feel very comfortable in their enforcement practices of the amendments.

PAUL MCGRADY

Thanks, Brian. And again, just for those that are concerned about accessible, we live with that now. We have UDRP complaints filed against domain names that were registered through a reseller model. And as far as I know, no registrar has ever written back to the UDRP provider and said that the registrant information is inaccessible. So, in the real world, I just don't see that as a problem. All right. Let's move on then to the next -- Oh, Nathalie, you raised your hand again. Go ahead.

NATHALIE PEREGRINE

I don't have a current example, but I file UDRPs very regularly. And every once in a while, there will be a registrar who says, sorry, I don't have that information. It's rare, but it does happen.

PAUL MCGRADY

All right. Okay, let's move on to the next one. We're -- whoops. We went from three. Nothing on four. Well, that's nice. Recommendation number four, my favorite. Moving on to REC5, the REC notes registrars must conduct an ADC in compliance with applicable law, contractual requirements, and data privacy safeguards.

Coming from the feedback, the suggestion changes registrars must conduct an ADC in compliance with applicable law (including data privacy laws) and contractual requirements. The reason why that is suggested to evolve is that nobody, we would have to create an encyclopedia of data privacy safeguards, whatever those are, and those would be jurisdiction by jurisdiction, and it would be an exhaustive exercise, and we would never get this done.

And so, it's just a reference back to, so it's to applicable law, and then to make everybody feel comfortable. We are including data privacy laws and then, of course, contractual requirements. Oh, and here we see contractual requirements without the dependent clause. See, look at us. That's probably where we should evolve it. All right. Any hands on this one? Okay. Let's move on. Anil. Let's move back.

ANIL KUMAR JAIN

Thank you, Paul. Anil for the record. I was just wondering whether we can use this law laws in place of law, because in a particular situation, there can be multiple applicable laws in that in a particular case may not be applicable to all. Thank you.

PAUL MCGRADY

Thanks, Anil. So, the suggestion there is to add an S or maybe an S in a bracket.

ANIL KUMAR JAIN

Yes.

PAUL MCGRADY

Okay. Volker.

VOLKER GREIMANN

Yeah, not a hill I'm going to die on, but just a little knit, because the focus seems to be on conducting the ADC, whereas the intended focus should be the compliance with applicable law. So, maybe we just switch around the language that the ADC must be conducted in compliance with applicable law. That would shift the focus in the language on the compliance and not on the ADC.

PAUL MCGRADY

That's a good knit because we don't want to create a second trigger or we've already dealt with trigger and rec one. All right. I'm going

to ask staff to grab that. That's good grammar. Anything else? All right, let's move on. Preliminary recommendation number six, the REC notes, a registrar must initiate and conduct an ADC promptly following the trigger as defined in Preliminary Recommendation 1, taking into account the specific circumstances of each case.

We have the BC suggestion, ADCs should be conducted concurrently with a domain name abuse complaint that triggered the ADC check and at a minimum, again, absent documented extraordinary circumstances that an ADC check must begin no later than 24 hours after the trigger and concluded no later than 72 hours after the trigger.

This has been the subject of discussion and it is pulled out from the comments. I think we should see if we can run this to ground to see if this is something that we want in the recommendation. Is this something that we want in implementation guidance? Is this something that we don't want at all? Let's open a queue on this one. Reg, go ahead.

RG LEVY

Thanks. I think putting numbers to this goes against what we're trying to do here, including a completion time is really weird to me. I guess that absolves me of having to do anything that Gabe wants because 72 hours after I've conducted the ADC, no more domains can ever be related to that initial domain. So, I think this is counterproductive in a lot of ways.

I think reasonability is reasonable, and that's why we keep arguing for that. The 24 hours, I think, is honestly going to be long in a lot of cases. Sorry, can you mute your mic? Thank you. Yes. Thank you very much. I think the 24 hours is actually going to be long in a lot of cases.

Most people are going to do it pretty soon after. If it takes 24 hours to start that ADC, there's probably extenuating circumstances, which means that that 25th hour that we waited in that one case is actually going to be reasonable. So, I really think we should go back to reasonable because both the 24 and the 72 go against what we're trying to accomplish.

PAUL MCGRADY

Thanks, Reg. Volker.

REG LEVY

Can I, real quick?

PAUL MCGRADY

Yes, back to Reg.

REG LEVY

Sorry. And this, I think, was something that the registrar's flagged as we could not live with it.

PAUL MCGRADY

Was this also flagged by the BC as it cannot live with? Okay. Or can't live without it, yeah. Okay. So, here we are. Every working group has these. It's okay. Volker.

VOLKER GREIMANN

Yeah, just two points. The first point is that it completely goes by any business realities. I mean, when dealing with abuse tickets and abuse compliance, we want to be minimizing the time that we spend on every single ticket so we can go through them and do other things afterwards.

Having this routine in there is basically nothing that we would ever do because if we waited for a certain time and then picked up the ticket again to conduct the ADC, that would just make no business sense and no practical sense in the execution of the ADC, the most practical way that I can see the conduction of the ADC is doing it right then and there when we are looking at the original ticket.

The second point is if we have any bad actors, then this kind of timeline would allow them to keep on domains longer. That could be seen as, well, if that is what we have a time available for that kind of action, then we'll use that to the max and keep those domain names on. for the max.

So, I'm very much interested in keeping that as promptly because that would close that loophole. I think this actually defeats the purpose of what we're trying to do here. It's foreseeable that this

came up because timelines is what the BC loves, but this one is not helpful.

PAUL MCGRADY

Thanks, Volker. Yeah, I think Steph did. So, Volker, there was something else that you said there, though, that you said it should be concurrently with the ADC. I don't think that we've said that anywhere in here. Should we be saying that?

VOLKER GREIMANN

Like I said, every registrar might have different processes. That's why I see that promptly is the right word. Our registrars will do it as part of the investigation and will take down the domain names that are being reported and identified as malicious at the same time that we're identifying the ones that we find in the ADC.

So, that's basically the same takedown. Other registrars may have different processes for that, but ultimately -- Voices from the Abyss. Ultimately, I think we want those things to happen as soon as possible in connection with the takedown of the original domain name and the investigation, not 72 hours later.

PAUL MCGRADY

Thanks. Hey, a note to anybody who's participating remotely, if you're hearing my voice, we're hearing yours unless you're muted. We love you. We miss you. We wish you were here. But we would love it also if you would mute. Thank you. All right. Next up is Luke.

LUKE WOOD

Hi, Luke here from the BC. Yeah, we've conferred and we're happy to drop the 24-hour timeframe in favor promptly. Just a quick update on that.

PAUL MCGRADY

Thanks. All right. Progress. Brian.

BRIAN CIMBOLIC

Yeah, that's great to hear from Luke. Thank you for that. The only other thing I wanted to note is that I think that the existing language is potentially better than the BC suggestion. In their interests, I mean, insofar as that the BC suggestion is premised only that an ADC is conducted because there was evidence found as a result of a complaint.

But registrars may be proactively looking for DNS abuse. They may be proactively identifying and taking down domains. And so, this specific wording would only have that subset of abuse that comes in as a result of a third-party complaint. So, just pointing that out.

PAUL MCGRADY

Thanks, Brian. Who's left? Mary.

MARY PENN

Hi, Mary from the IPC. So, going back to the prior conversation about measuring effectiveness and that being data driven, I don't

think having a floor and a ceiling defeats the purpose at all. And if we're able to conduct and normally do, as Reg said, ADCs within 24 hours, what's the harm of having that?

It just provides the guardrails and it goes right to effectiveness and being able to measure, is this PDP doing anything? Are we effectuating any cause whatsoever? Just throwing that out there.

PAUL MCGRADY

So, Mary, is that an enhancement of the metrics question? I mean, is that a data point we should be capturing, how long it takes?

MARY PENN

Yeah, I think that would be helpful context to kind of understand. I mean, I think we're picking very small pieces and talking primarily about any sort of strain to resources on the part of the registrars, but I think we need to take a big step back of why are we even having this conversation is to effectuate some sort of change. So, I think having clearly defined guardrails and not loose language helps us measure that.

PAUL MCGRADY

Okay. Thanks, Mary. Francis, go ahead.

FRANCIS OJEIFO

All right. Thank you. Francis, for the record. Francis Ojeifo. The basic suggestion allows for exceptional under-documented extraordinary circumstances. What specific criteria or scenario

qualifies as extraordinary to prevent registrars from using this as a loophole to delay checks? So, I need to just know before. Thanks.

PAUL MCGRADY

Thanks, Francis. Okay. So, before we move on to this in terms of I think what happened is that the BC has withdrawn their can't live with on this and is okay with promptly. But the IPC continues on the within 24-hour minimum standard. Or is the IPC asking that how long it took be measured and as part of the normal data collection, that if ICANN compliance asks for it, that the registrars have it? And try to help me understand, is it a requirement or is it a data collection requirement? Thanks. Marc, go ahead.

MARC TRACHTENBERG

I think the IPC is aligned with the BC on having this not be a can't live with. I think we understand the reasons for the reasonableness standard, and I think what Mary is identifying is like some metrics that would be helpful to collect of knowing how long these things are taking. It's good that, I think in the case of certain registrars it may happen very quickly and others maybe not so quickly. And so, this would be useful from a data collection perspective, but there's alignment that reasonableness is acceptable.

PAUL MCGRADY

Thanks, Marc. Okay, any other comments on this? Well, I'm going to move quickly before we change our minds. Oh, Nick's got something to say.

NICK WENBAN-SMITH

Just to clarify, you said reasonableness, but the text we were looking at said promptly. Just to make sure we complete agreement on the circle there.

PAUL MCGRADY

Marc, old hand? All right. REC7. The REC notes two topics for future policy development considerations. So, this is things that we are going to take back to Council. In terms of the process, I want to talk to you guys about how I envision this. I don't actually envision these things being an annex to our report because they were inherently out of scope or else we would have looked at them.

I anticipate that this will be a letter or some other communication from this working group to Jen, our Council liaison, whose job it will be to take these ideas back to Council. That is so that we do not confuse the IRT with an annex. We want our report to be very user-friendly to the IRT. But here's what we have so far for our letter to Jen. There are two topics for future policy development consideration so far.

Transparency on mitigation action taken, whether or not there should be some methodology for the broader community to see what actions were taken. That's not in our scope, but that's something that folks have identified that the council should consider. And whether or not there is some sort of recourse mechanism.

Again, we're not going to build consensus around whether or not these topics we think Council should look at them. These are just ideas that came out from this group. So, this is not something that everybody's agreeing to or anything like that. It's just a list. The BC suggestion to add an item, and it was the concern about lack of cross-registrar intelligence sharing.

Again, out of scope, sounds like a good idea to me, may not sound like a good idea to everybody in the table, sort of doesn't matter if it's a good idea to everybody at the table because it's just an idea we're sending back to council, but it's not off the rails. The registrar had some ideas. They wanted to remove the bullet issue on transparency on mitigation action taken and add the following two items.

They're concerned about lack of registry level abuse pattern investigation and mitigation requirements. That's different. And then development of framework of cross contracted party information sharing regarding detected abuse patterns. And so, this is an example. In that letter, it'll say some thought we should do this while others thought we should do that. Hey, Council, think about it.

So again, this isn't like my idea is better than yours. It's just ideas. Yep. And then the leadership team suggestion, this is back to my initial point, which is have Jen share the list with council, but not have it be its own REC, since none of these are policy. And so, I think recommendation seven will probably not be a recommendation.

It'll just be a, there's no recommendation here, but Jen's got a letter for you, council. Have fun.

All right. Any reaction to that? Give it some thought for anything else that you want. I mean, I don't want to belabor REC7, but take the next little bit and think about if there's anything else on here. And as we iterate, if we come up with something else that's out of scope, that we think, or at least some of us think is a good idea, it can go on the list. This list is not closed as of today. It's just the current list.

All right. Do you ever see an illegal document, a section that says, this deleted on purpose or something like that. That's kind of what we built here with REC7. We should have made this REC9, and it could have just died without being reordered. But if we renumbered them now, I would lose my mind. So, okay. Moving on. That's it. Did we do it? Okay. Now we are going to have a PSA from staff.

FEODORA HAMZA

So, unless Paul has any other agenda item, this would be it for this today's session. What staff would do is take all the input we received today, develop some language in recommendation format for charter question eight and nine, and also add in suggestion mode the changes that we discussed today. So, ideally this would go out to the working group later today so you can review it tomorrow. And then for session three, we would follow up

with a discussion on cannot live with and other pending items.
Back to you, Paul.

PAUL MCGRADY

Thank you. So, before we wrap this session, I just want to say, and I know Nick shares this view, thank you to everybody around the session today. We saw some forward progress. We saw some people talking it out and getting on the same page, dropping things they can't live with or evolving the language. This is, from my point of view, a really productive session.

And I've said this publicly, and I'd like to say it publicly again, it's a joy to work with this working group because although sometimes we push hard, it's all because we're here for a reason and people know what they're doing. And the groups within ICANN have really sent their very best people.

And so, thank you all for being here. And we'll go ahead and wrap it and we will see you on Wednesday. Remember, tomorrow's constituency meeting. So, take all this back to them and let's see if we can make some more progress on Wednesday. All right. Thank you.

[END OF TRANSCRIPTION]