

Comments of Coalition for Online Accountability
On
Background Paper on “Mitigating Malicious Conduct”

November 22, 2009

The Coalition for Online Accountability (COA) offers the following brief comments on the ICANN background paper on “Mitigating Malicious Conduct.” See <http://www.icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-04oct09-en.pdf>.

COA consists of nine leading copyright industry companies, trade associations and member organizations of copyright owners. These are the American Society of Composers, Authors and Publishers (ASCAP); the Business Software Alliance (BSA); Broadcast Music, Inc. (BMI); the Entertainment Software Association (ESA); the Motion Picture Association of America (MPAA); the Recording Industry Association of America (RIAA); the Software and Information Industry Association (SIIA); Time Warner Inc.; and the Walt Disney Company. COA is a member of the Intellectual Property Constituency (IPC) of ICANN’s Generic Names Supporting Organization (GNSO), and supports IPC’s comments on the background paper. However, in its own right, COA and its participants have engaged actively in many aspects of ICANN’s work since the inception of the organization, and have commented extensively on the new gTLD process,

While the paper contains many sound recommendations which COA endorses, in the final analysis it overpromises and underdelivers. However, this shortcoming can be fixed.

On page 5, the paper states:

Certain new TLDs may involve e-service transactions requiring a high-confidence infrastructure (e.g., electronic financial services or e-voting) and may involve critical assets and infrastructure (such as those supporting energy infrastructures or medical services) that must be afforded increased protection from the actors already conducting malicious conduct using the domain name system.

If these TLDs (or more precisely, their users, including but not limited to those who register domain names in them) “must be afforded increased protection,” then clearly ICANN must mandate that these increased protections be provided by registry operators for these TLDs. But ICANN is not doing so. Instead, it offers a “High Security Zones Verification Program” that “will be entirely optional.” (page 12) Indeed, a registry operator that goes to the effort and expense of complying with the Program will gain precisely nothing, at any point in the new gTLD process -- application, evaluation, objection, contract negotiation, or delegation – vis a vis a competitor who spurns the Program and does the bare minimum that would be asked of any new TLD that does not “require a high-confidence infrastructure” or “involve critical assets and infrastructure.”

Clearly, for ICANN to deliver what this paper promises, the High Security Zones Verification Program must be made mandatory, either for all new TLDs, or at least for a defined set of new TLDs that meet the criteria in the quotation above, or that are determined to be at an unusually high risk of being the venue for criminal, fraudulent or illegal conduct, including but not limited to copyright piracy. COA would be glad to work with ICANN staff to help develop a workable definition for this subset of new gTLDs.

The paper also overpromises (though a bit more obscurely) by referring (on page 6) to “mitigation measures that to be [sic] implemented at the registrar-registrant interface.” Assuming that this sentence is missing the word “need” or “are” before “to be,” it is not enough for ICANN to state that “ these new registries are encouraged to negotiate stronger standards for business and security practices with accredited registrars,” or that “ a new gTLD registry will have the ability to require registrars to implement specific measures to reduce malicious conduct in order to register labels within their zone.” (Pages 6-7). If, in order to deliver adequate protection against malicious conduct, registrars servicing particular TLDs need to be made subject to strict standards or to implement specific measures, then the agreement that ICANN signs with the registries for these TLDs should mandate the registries to take these steps in their contracts with registrars. Of course, there is ample precedent for such mandates in ICANN-registry contracts, with respect to requirements imposed by registries on registrars regarding Whois data quality. See, e.g., <http://www.icann.org/en/tlds/agreements/asia/appendix-s-06dec06.htm#6> (.asia).

Thank you for considering COA’s comments. Please contact the undersigned with any questions.

Respectfully submitted,

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