

History of DNS Abuse at ICANN

The contractual provisions governing DNS abuse originally came from policy work done by the ICANN community in 2009 and 2010 through the Registration Abuse Prevention Working Group (RAPWG). The report by the RAPWG distinguished between “Registration Abuse” (now referred to as technical abuse) and “Use Abuse” (content abuse). The RAPWG defined technical abuse as issues related to domain name system infrastructure and using the DNS itself to perpetuate harm. This included the distribution of malware, abusively operating botnets, phishing, pharming, and spam where it was used as a delivery mechanism for other types of registration abuse.

Content abuse was defined as harms which were related to the “use” of a domain name, particularly where the harm stemmed from content on a website. This included activities such as trademark and copyright infringement, defamation, piracy, child sexual abuse, hate speech, etc. The RAPWG concluded that Registration Abuse was within ICANN’s jurisdiction for policy development while content abuse was not. The one exception according to the group, was the Uniform Dispute Resolution Policy (UDRP) because that involved the registration and use of domain names in bad faith.

As a result of many discussions between the Governmental Advisory Committee and the ICANN Board, the Registry Agreements were amended in 2013 to include a new Specification 11. Drawing upon the work of the RAPWG, ICANN added Section 3(b) requiring that registry operators periodically conduct a technical analysis to assess whether domains within their TLD are being used to perpetrate security threats. Security threats are defined non-exhaustively as “pharming, phishing, malware, and botnets”.

Recognizing that the RAPWG concluded that ICANN did not necessarily have jurisdiction to conduct policy development over content abuse, ICANN added a second provision in Specification 11 that requires registries to include terms in their RRAS, registrants to agree that they would be prohibited from perpetuating technical and content abuse.

In addition, when ICANN’s Bylaws were re-written as part of the IANA Transition, a provision was added that reflected the previous work of the community and clearly stated that ICANN is not responsible for the content which uses the DNS. Hence why registries and registrars are clear that they are not contractually required to act against content abuse.