

From: David W. Maher
Sent: Friday, March 18, 2011 6:53 PM
To: PETER DENGATE THRUSH; Rod Beckstrom; 'Diane Schroeder'
Cc: JOHN JEFFREY; AMY STATHOS; Stacy Burnette
Subject: Statement by the Registries Stakeholder Group

Attached please find a Statement by the Registries Stakeholder Group Regarding Procedures for Notification of Breach or Termination of a Registry Agreement. This statement was adopted by the Group at meetings during the Silicon Valley ICANN Meeting, and is supported by a supermajority of the Group.

We ask that this message and attachment be posted to the ICANN Correspondence website.

Respectfully submitted,

David W. Maher
Chair, Registries Stakeholder Group
Senior Vice President - Law & Policy
Public Interest Registry

Statement by the Registries Stakeholder Group

Regarding

Procedures for Notification of Breach or Termination of a Registry Agreement

March 18, 2011

The gTLD Registries Stakeholder Group has been informed that, in the case of the recent .jobs alleged breach notice (“Notice”), there was no prior communication between the ICANN staff and the registry operator regarding the concerns raised in the Notice. If indeed the case, this is especially troubling in that it appears the conduct in question arises directly out of a new registry service that we believe was not only approved by the ICANN Board, but was re-affirmed by the ICANN Board upon reconsideration.

We wish to emphasize that registry operators perform a critical role in the stable resolution of DNS services that are relied upon by millions of people and businesses. While we appreciate the important role and obligations placed upon ICANN compliance staff to swiftly take action on behalf of ICANN, this should never come as a surprise to the impacted registry or to the ICANN Board. We understand that in rare emergencies it may not be possible to engage in discussions prior to the issuance of a breach notice, but we strongly believe that proactive, constructive engagement should be the preferred approach, and a notice of breach or termination should only be an option of last resort. We are not aware of any facts that leads us to believe this is the case in this instance.

ICANN must rely on a clear, predictable and transparent mechanism when developing and communicating a Notice to a registry operator, especially in a world of hundreds of TLDs. When a Notice is issued, we believe ICANN should inform the Board of the issue as well as the efforts made by ICANN staff to resolve the issue with the registry prior to the Notice, including any suggested solutions to resolving the breach. We believe that the General Counsel should develop and implement a procedure for notification of its intention to issue a Notice concerning a critical DNS function, particularly if the conduct in question arises directly out of a new registry service that was approved by the ICANN Board. Incorporating this procedure will enable members of the Board to be informed about such intention.

It is our firmly held view that, only in emergency situations that present a direct impact and harm to the security and stability of the DNS, should ICANN initiate an immediate action without prior notification to the registry operator and the Board. The process of initiating and communicating a Notice to a registry operator must provide the type of assurance and transparency the user community would expect from

ICANN in its role as the oversight body to a critical function of the Internet. We believe this is consistent with the ICANN's objective of building broad-based user and institutional confidence. We strongly advise the ICANN Staff and Board to incorporate and communicate a clearly defined procedure without delay.

Respectfully submitted

The Registries Stakeholder Group