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May 17, 2012

By E-mail to: [com-renewal@icann.org](mailto:com-renewal@icann.org)

Internet Corporation for Assigned Names and Numbers (ICANN)  
4676 Admiralty Way, Suite 330  
Marina del Rey, CA 90292-6601

**Re: .Com Registry Agreement Renewal – Reply Comment**

Dear ICANN:

I am writing on behalf of the members of the Internet Commerce Association (ICA) in regard to ICANN's reply period on the proposed renewal of the .Com Registry Agreement which would allow VeriSign to continue operating the largest gTLD for an additional six-year term running from December 1, 2012 through November 30, 2018. This Reply Period was opened on April 27<sup>th</sup> and closes today, April 26<sup>th</sup>. ICA filed an initial comment on this matter on April 26<sup>th</sup>, and the text of that comment can be found at <http://forum.icann.org/lists/com-renewal/msg00032.html>.

ICA is a not-for-profit trade association representing the domain name industry, including domain registrants, domain marketplaces, and direct search providers. Its membership is composed of domain name registrants who invest in domain names (DNS) and develop the associated websites, as well as the companies that serve them.

Professional domain name registrants are a major source of the fees that support registrars, registries, and ICANN itself. ICA members own and operate approximately ten percent of all existing Internet domains on behalf of their own domain portfolios as well as those of thousands of customers.

Imposition of URS on .Com Through Contractual Fiat

In our April 26<sup>th</sup> letter we stated:

**We applaud ICANN's rejection of trademark interest entreaties that it impose URS and other untested new RPMs on .com through contractual fiat, as well as ICANN's recognition that the rights and legitimate expectations of registrants require that any consideration of this matter be within the normal policy development framework. We also urge ICANN to initiate the long-delayed implementation process for URS so that the community may review its operational aspects and the qualifications of prospective arbitration providers well in advance of the first delegations of new gTLDs.**

That letter also addressed comments filed by the Internet Committee of the International Trademark Association (INTA), stating:

*We take serious issue with comments on the proposed contract such as those of the International Trademark Association (INTA) which assert that ICANN's reasoning on this critical matter is somehow inconsistent with its prior statements regarding RPMs at new gTLDs. Rather, what is inconsistent is for INTA and other trademark interests that called for delay of the initiation of UDRP reform consideration so that the performance of the new RPMs could be considered in that context to now try to subvert ICANN's standard policymaking process by urging imposition of URS on .com absent any experience with it. We also take issue with the notion that "harmonization" requires imposition of URS on .com and other incumbent gTLDs at some future point in time. We believe that the experience with URS and other new RPMs needs to be thoroughly evaluated after a substantial period of use at new gTLDs before that debate should be initiated, and also believe that the .com registry is qualitatively differentiable from all other gTLDs and may well deserve and require some distinct contractual anomalies well into the future.*

Today we wish to also address the comment letter filed by ICANN's Intellectual Property Constituency (IPC) on April 26<sup>th</sup>. The IPC comment urges ICANN to require VeriSign to implement URS in .Com at some point in time during the six-year term of the renewal contract, stating:

*As noted in the Executive Summary, some allowance for the fact that ICANN has not yet articulated all rules applying to those TLDs or identified the service providers to be responsible for administration of the RPMs makes immediate application of the RPMs on the renewal agreement's effective date unreasonable. However, it would appear equally unreasonable to defer any and all implementation of these RPMs for the full six-year duration of the renewal term. To say that the RPMs should undergo a "ramp up" period in the new gTLDs before they should be required in legacy gTLDs should not equate to a six-year free-pass for the largest gTLD registry from compliance with the extensively debated and finally approved RPMs.*

While we concur with the IPC's recognition that it would be unreasonable to require the immediate imposition of URS and other new rights protection mechanisms (RPMs), we take strong exception to its view that the contract should specify a date certain for their use at .Com and that failing to do so amounts to a "free pass". The IPC is well aware that the GNSO Council, under strong pressure from the IPC and other trademark interests, has deferred the initiation of UDRP reform until eighteen months after the launch of the first new gTLD in order to allow the reform process to consider the performance of the new RPMs. Assuming that ICANN is able to stick fairly closely to its anticipated initial approvals of new gTLDs in the first quarter of 2013, the UDRP reform process should start around mid-2014. Even if that process takes an extended period of 18-24 months final recommendations should be ready for ICANN community and Board consideration in the first half of 2016. Since the renewal contract for .Com extends through December 2018, the results of that UDRP reform process will be fully applicable to .Com and other incumbent registries to the extent that final adopted recommendations make them so.

**Therefore, deferring a decision on imposition of URS and other new RPMs on .Com does not provide it with a "free pass". Rather, it properly assures that no premature decision on that question will be made until ICANN's multistakeholder policy process has a full opportunity to consider the initial performance of new RPMs at new gTLDs. That is the reasonable and responsible process that should be followed – making a decision now to impose URS or other RPMs on more than 100 million .com domains absent any real world experience would be unreasonable and irresponsible.**

We also take issue with the IPC's attempt to equate new RPMs with other changes that have been made in the proposed .Com renewal contract – such as requiring the .Com operator to support IPv6 access to the Shared Registration System; supporting DNSSEC; complying with IDNA and IDN guidelines; and other features which have been transposed from the standard new gTLD registry agreements. We believe that

these technical updates to the .Com agreement can be readily differentiated from the new RPMs, especially URS. Unlike these technical updates, URS affects the substantive and procedural due process rights of registrants in more than 100 million .com domains and involves the balancing of those rights against those of trademark holders as well as the fashioning of an effective and fair arbitration process. Current .Com registrants acquired their domains with full knowledge that they would be subject to the UDRP but with no notice of or consent to the URS. As ICANN's own announcement of the .Com renewal contract aptly noted:

...registrants have procured domain names in existing gTLDs with an understanding of the landscape of existing RPMs. New RPMs affect registrants, as well as registries and registrars. They should arguably be introduced in existing gTLDs after a bottom-up discussion... When creating the new gTLD rules, existing registrants (and registries) were not consulted with the idea that those protections would be implemented in existing gTLDs without further community discussion.

#### Related Uncertainty of URS Policy and Timing

Our prior letter on this subject also noted the failure of ICANN to initiate an open implementation process for the URS, similar to the one we have been participating in for the Trademark Clearinghouse, stating:

We remain hopeful that ICANN will finally initiate the implementation process for URS as soon as possible so that we can understand in detail how it is expected to operate, and see whether any credible arbitration body can be secured to administer it at the ultra-low pricing promised to trademark owners. However, in this regard we are dismayed and bewildered that ICANN's newly constituted New gTLD Program Committee adopted a Resolution at its initial April 10<sup>th</sup> meeting that "directs staff to provide a briefing paper on the topic of defensive registrations at the second level and requests the GNSO to consider whether additional work on defensive registrations at the second level should be undertaken". This action has created additional confusion and anxiety about the final pre-launch status of URS and other new gTLD RPMs, and provides trademark interests with yet another opportunity to advance already-rejected arguments that the burden of complainant proof and post-decision options be altered to convert URS from a narrow supplement to the UDRP into a bargain basement supplement at a severe cost to registrant due process rights. We again urge ICANN to immediately initiate the long-delayed implementation process for URS, including publication of a request for

**Proposals (RFP) and establishment of an Implementation Advisory Group (IAG) similar to that constituted for the Trademark Clearinghouse. As URS is required to be in place at the time that the first new gTLD is delegated, an event likely to occur in the first part of 2013, it is critically important that IAGN provide sufficient time for development of the implementation process and feedback from the entire community including potential registrants in new gTLDs.**

Our concerns in this regard have only been substantially heightened by intervening events since April 26<sup>th</sup>. On May 1<sup>st</sup> ICANN released its draft FY 13 Operating Plan and Budget, which contained the following item of direct relevance:

**Uniform Rapid Suspension (URS) – \$175K**

At present there is a significant gap between the features specified for the URS procedure and the desired cost. In order to bridge this gap we will: hold two summit sessions to reconfigure the URS to arrive at a lower cost model (one session in FY12 budget and another in this FY13 plan), conduct a process to develop and finalize URS Model in consultation with current UDRP providers and community members; and conduct RFP based on URS Model and select URS providers. The goal is have a URS program in place and providers contracted and onboard by June 2013.

We had no idea where this "summits" concept had come from or what it meant, nor did any of the many individuals involved with the ICANN policymaking process who we made follow-up inquiries to. That included members of the GNSO Council, which added this item to the agenda of its May 10<sup>th</sup> meeting. The Council received the following responsive e-mail from Kurt Pritz, ICANN's Senior Vice President for Stakeholder Relations, in explanation (<http://gnso.icann.org/mailing-lists/archives/council/msg13030.htm>):

**Uniform Rapid Suspension:**

There is a budget line item identified as "URS Summit" implementation work conducted on the URS to date indicates that the implementation will not attain the cost target of \$300-\$500 in URS fee per case. This is based on discussions with WIPO staff, direct communication with the IPC, and examples understood from the ICM registry and Nominet. Because the fee target is a primary goal of the URS, additional work and study should be undertaken to determine if amendments to the program might attain the fee goal and retain the

safeguards and other features of the program. This study must be undertaken by a community group. While the scope of the effort is not yet defined, it was necessary to reserve resources for the work in the ICANN's FY13 budget. The line item in the budget is the placeholder for those resources while the best way to accomplish the work can be designed. Again, the work will be done through a bottom-up, community discussion similar to the work done to create and review the URS in the first instance. The timing of the budgeting process required that we create the line item before planning for this work could be drafted and worked through the community.

We are extremely concerned that ICANN staff have discussed implementation of the URS with only a narrow select group, including WIP0 and the IPC, but not with other third parties and ICANN constituencies having a strong stake in its operation – including new gTLD applicants as well as representatives of registrants such as the ICA. And we reject the notion that URS policy should be reopened to attain a pricing target that never appeared realistic in the first place – in our view, policy should dictate pricing, not the other way around, and elevating price to an overriding goal risks serious damage to the due process rights of registrants.

However, it is crystal clear from these recent budget developments that the URS is a long way from provider solicitation through RFPs, much less launch, and that its substantive policy elements may unwisely be reopened for debate. As the IPC's own comment notes, the present rules for URS and other new RFPs "were refined after extensive discussion far too protracted to detail". Given that prior extended and divisive debate over URS we are extremely skeptical that we will see "a URS program in place and providers contracted and onboard by June 2013" if its policy elements are reopened to accommodate low pricing of URS filings. In fact, we fear that such reopening will result in a protracted delay that will prevent new gTLDs from opening domain sales to the general public and thereby begin to exert some market pricing pressure against .Com.

The revised uncertainty over the final policy details of the URS, as well as the strong possibility that its introduction may be substantially delayed, argue even more strongly against its imposition on .Com registrants through contractual fiat. Let's get the URS policy finalized, get a credible arbitration provider or providers selected, and then see how it operates before considering its imposition on .Com. That is the reasonable and responsible way to proceed on this key matter affecting registrant rights in more than 100 million .Com domains.

Conclusion

ICA appreciates this opportunity to file this reply comment regarding the draft renewal Agreement for VeriSign's continued operation of the .com registry. Thank you for considering our views in this matter.

Sincerely,



Philip S. Corwin

Counsel, Internet Commerce Association