

## Verisign Reply Comment on ICANN's Proposed Changes to the New gTLD Registry Agreement

Verisign has carefully reviewed the public comments submitted concerning ICANN's proposed Registry Agreement modifications and respectfully submits the following observations in response to those comments.

### Unilateral Right to Amend – Section 7.6.c

Among the 41 substantive comments submitted, it is clear that there is no support for ICANN's proposed 'unilateral right to amend' language inserted in Section 7.6.c. This was predictable and should have been anticipated by ICANN before issuing the latest proposed draft on February 5. As described in detail in several comments submitted, this proposal was originally soundly rejected by the community in 2010. The "Compromise of 2010", which is included in the current version of the Guidebook, was the negotiated agreement surrounding the concept of ICANN's unilateral right to amend. As such, it was inexcusable for ICANN to reintroduce what is largely their original position at the eleventh-hour. As noted in several comments, this proposed language is a non-starter and must be removed in its entirety.

Much has now been said and written, including by us, concerning ICANN's effort to obtain in Section 7.6 a unilateral right to amend the Registry Agreement. By doing so, ICANN has created a credibility gap that now threatens ICANN's legitimacy. The question ICANN must answer as it contemplates its next steps in the face of such unified opposition and criticism is this: Will ICANN resist the temptation to impose its views without legitimacy, or will ICANN uphold the bottom-up multi-stakeholder process that previously rejected the unilateral right to amend though a negotiated compromise in 2010?

### PIC-SPEC and PICDRP

While certain parties have supported the concept of a public interest commitment and several hundred such commitments were filed on a very compressed timeline, Verisign continues to view the PIC-SPEC and the recently released PICDRP with concern. ICANN has not conducted the required bottom-up process for the PIC-SPEC or the PICDRP and many improvements could have been made within such a process. The PIC-SPEC and PICDRP raise difficult legal issues involving the scope and rights of third parties who are strangers to the agreement in question. Such a major and significant step should have been conducted following a thorough and complete process and not the time-shortened, top-down, rushed approach taken by ICANN, which we believe is being driven solely by ICANN's artificial deadlines to "recommend delegation" on the arbitrarily selected date of April 23. With the rushed introduction of the PIC-SPEC, ICANN appears to have abandoned the multi-stakeholder model and consensus-based policy development process that is so critical to the community and to the legitimacy of ICANN the organization.

Verisign acknowledges the need for ICANN to respond to the GAC's request for enforcement mechanisms for commitments made to governments regarding concerns communicated via GAC Early Warnings and GAC Advice. If the PIC-SPEC proposal was restricted to cases where GAC Early Warnings were given and where GAC Advice will be given in the near future, and if the proposal was fully vetted via the bottom-up multi-stakeholder process as discussed above, then the proposal or some variation of it would have had a much stronger chance of success.

## Conclusion

ICANN and the ICANN Board must now seriously consider and correct the many problems with the proposed changes, especially as noted with respect to the unilateral right to amend the RA (Section 7.6), which should be rejected entirely, and the lack of specificity around important details in the public interest commitment, Specification 11.