

The following are Verisign's observations and comments on the proposed changes to the .BIZ Registry Agreement:

1. Section 4.2 "Renewal" was modified to introduce new language (not found in the .com, .net, or .org agreements) prohibiting any change upon renewal to at least one, and possibly all, of the enumerated exceptions to the requirement that renewal be upon terms similar to the terms in the Registry Agreements for the five most "reasonably comparable" gTLDs.
 - It is unclear whether this change is intended to apply solely to the definition of Registry Services, or whether it is intended to apply to all of the enumerated exceptions listed in Section 4.2. Given this ambiguity and the lack of any explanatory comments regarding the proposed change, ICANN should provide a detailed explanation clarifying both the nature and scope of the proposed change.
2. Section 5.1 "Resolution of Disputes" was modified to incorporate language from the most recently proposed draft of the new gTLD Registry Agreement requiring mandatory mediation prior to the initiation of arbitration proceedings.
 - Verisign believes the newly proposed mediation requirement is poorly defined and suffers from the same deficiencies as the mediation provisions in the proposed new gTLD Registry Agreement: (a) no mechanism is proposed in the event parties are unable to agree to a mediation provider and no timeframe for resolution is provided; (b) the rules of mediation are determined by the mediator, creating uncertainty and inconsistency in mediation processes; (c) the provision is vague as to whether the parties may obtain relief from a court to protect against irreparable harm without going through the mediation process first; and (d) as a general matter, the proposed language inserts a pointless and costly non-binding mediation requirement that will likely serve only to delay ultimate resolution of any dispute.
3. Section 6.3 "Change in Control." This new section was added to mirror the terms of the most recently proposed draft of the new gTLD Registry Agreement and provide for the right of ICANN to terminate the agreement if it reasonably determines to withhold its consent to the change of control.
 - The newly proposed language allows ICANN to withhold consent to a change in control based on undefined criteria, standard or process, entirely undermining the consent provision itself. As Verisign has previously stated in response to the recent drafts of the new gTLD Registry Agreement, ICANN's refusal to define such criteria gives ICANN the flexibility to make inconsistent discriminatory and/or dilatory determinations. ICANN has also removed all limitations on its ability to assign the agreement in Section 8.5, including the requirement that the assignee be a "nonprofit corporation organized for the same or substantially the same purposes." Again, as Verisign has previously stated in the context of the proposed new gTLD Registry Agreement, this creates an unfettered right to assign the

agreement to an entity that may not be appropriate for running/monitoring registries (meaning technical expertise or commitment to the Internet) and to an entity in an unknown jurisdiction.

4. Section 7.1(a) “Access to Registry Services” was amended to include a new provision requiring Neustar to amend its Registry-Registrar Agreement (RRA) to require registrars to use the 2013 Registrar Accreditation Agreement (“RAA”) within 60 calendar days of notification from ICANN to Neustar that registrars representing 67% of the registrations in the TLD have executed the 2013 RAA. Once the amended RRA is approved by ICANN, then Neustar is required to require each registrar to enter into the amended RRA utilizing the RRA’s amendment procedures. If registrars do not become a party to the final 2013 RAA within 270 calendar days from the effective date of the amended RRA, then the registrars' access to the TLD registry system will be suspended (that is, those registrars will not be permitted to add new registrations or initiate inbound transfers of registrations). This requirement is dependent upon the registry operators of the .com, .info, .net and .org gTLDs also submitting similar requests to amend their Registry-Registrar Agreements.
 - On its face, this new provision is an example of an attempt by ICANN to assert regulatory control over the registrar constituency by leveraging the interrelated nature of the various contracts governing the provision of registry and registrar services, which raises possible competition issues. Here, contrary to the established procedure for consideration of proposed RRA amendments (which contemplate that registry operators will initiate amendments, followed by a notice and comment period and ultimate ICANN board approval), ICANN is mandating that the registry operators amend their RRAs (an agreement approved by ICANN but to which ICANN is not a party) to include an ICANN-mandated provision that requires registrars to enter into the new 2013 RAA with ICANN (an agreement to which the registry operators are not a party) in order to avoid a suspension of service from the registry operators under the RRA.

Under the current version of the RAA, ICANN has a limited ability to modify the terms of the RAA prior to its expiration date. Consistent with the bottom-up multi-stakeholder model, the current RAA permits ICANN-initiated modifications to the terms of a RAA prior to its expiration date only under a Consensus Policy-driven framework. Absent modification under the multi-stakeholder model, registrars are required to enter into a new RAA with amended terms only when the registrar’s current RAA expires. Faced with the existing contractual restrictions on its ability to force registrars to adopt the 2013 RAA, ICANN has chosen to leverage the fact that the RRA, unlike the RAA, contains an amendment procedure under which registrars are required to accept ICANN-approved amendments to the RRA within 15 days after receiving notice of an amendment. This attempt appears to directly conflict with both the spirit of the multi-stakeholder process and the express terms of the RAA as it currently exists.