

This comment is submitted in an individual capacity.

A review of the documents associated with this request reveals that it extends well beyond allowing for the registration of second level domains (SLDs) in .name that consist entirely of numbers (or of numbers with hyphens). The ICANN community in general, and intellectual property rights holders in particular, have, for nearly a decade, relied upon the narrow scope of permissible registrations in this gTLD. I question whether the full impact of the broad expansion proposed has been studied and evaluated. Such a study should precede ICANN Board consideration of this request.

### Current situation

Appendix 11 to the .NAME registry agreement sets out, in section 2, the permissible SLD registrations in .name. A person can register his or her own Personal Name; the name of a fictional character in which the registrant has trademark or service mark rights; and additional numeric characters at the beginning or end of the Personal Name, where needed to differentiate multiple registrants for a common name.

Importantly, “Personal Name” is limited to: (1) a person’s legal name; or (2) a “name by which the person is commonly known.” The latter category is defined to include “a pseudonym used by an author or painter, or a stage name used by a singer or actor.”

Registrations made in violation of these requirements can be challenged via the Eligibility Requirements Dispute Resolution Policy (as well as via the UDRP in appropriate cases).

These restrictions were certainly important to the Intellectual Property Constituency when it negotiated with GNR, the original applicants for the .name registry (as it did with every other applicant in the proof of concept round), regarding the terms and conditions of their application. My recollection is that the original proposal for .name was far more expansive regarding permissible SLDs, but that the scope of the proposal was narrowed, in order to reduce the risk of conflict with intellectual property rights, as well as for other reasons.

Similarly, when, in 2002, the original registry operators for .name sought to modify their obligations to provide public access to Whois data on .name registrants, the restricted character of permissible SLD registrations in .name played a significant role in the negotiation and ultimate approval of the modifications reflected in the ICANN Board’s December 2002 resolutions.

### VeriSign Proposal

VeriSign, to whom the then-current registry agreement was assigned by GNR in 2009, seeks to expand significantly the range of permissible SLD registrations in .name. Its stated goal is to permit the registration of SLD’s consisting entirely of numbers, or of numbers and

hyphens.<sup>1</sup> However, the full text of the proposal reveals a much more sweeping effect. “Personal Name” would be redefined to expand the second category of the definition in the existing agreement, and to add two new categories:

- The phrase “name by which a person is commonly known” would be expanded to include “a nickname.”
- Personal Name would also include “a number by which a person is identified.” This is further defined to encompass not only a telephone number, but also “any other number which individuals use to identify themselves.”
- Personal Name would be further expanded to encompass “any other personal identifiers.” This category is said to include, “without limitation, a handle used by individuals when communicating via a mobile telephone, or a screen name used by individuals when communicating via instant message or any other identifiers which individuals use to identify themselves.”

### Issues

In short, VeriSign proposes to change the SLD eligibility standard from an objective test to a purely subjective one. Even if there is no evidence that a person is “commonly known by” a particular string of letters, numbers, or other symbols, the person could plausibly assert that she use that string to identify herself, even if only to herself or to a very limited group. This certainly invited abuse, and also has obvious implications for the viability of any Eligibility Requirements Dispute Resolution Policy.

The proposed change also has an impact on the defensive registrations that would be available to a trademark owner, since under Appendix 11 “a Defensive Registration will not be granted if it conflicts with a then-existing Personal Name Registration.” Since a vast new range of permissible Personal Name Registrations would be opened if the proposed amendment were adopted, the range of potential defensive registrations would be correspondingly diminished.

### Conclusion

ICANN’s response to VeriSign’s request (<http://www.icann.org/en/registries/rsep/arias-to-kane-09sep10-en.pdf>) refers only to “a preliminary review of VeriSign’s request to allocate numbers and hyphens in dot-NAME.” As explained above, VeriSign’s request is much more expansive than that, and could have implications for other aspects of the .name registry

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<sup>1</sup> VeriSign’s Registry Request Service submission dated 8/25/10 states “the .name Registry had always planned to remove this requirement in order to make domain names with pure numbers and all combinations of numbers and hyphens available for registration.” (emphasis added) This raises the question of whether this plan was ever disclosed to ICANN, either by the original registry applicants and operators, or by VeriSign, and if not, why not. I don’t recall GNR ever disclosing this plan to IPC representatives, during the period through the end of 2002 in which our constituency was in frequent conversation and negotiation with GNR and its representatives. However, I have not had any chance to review the files on this, and my recollection may well be faulty on this matter.

agreement on which the community has long relied. ICANN should review and evaluate these implications before taking action on VeriSign's request.

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