

**COMMENTS OF OVERSTOCK.COM  
ON THE PROPOSAL FOR RENEWAL OF THE  
.COM REGISTRY AGREEMENT**

**Submitted to the  
Internet Corporation for Assigned Names and Numbers**

**Jonathan Johnson, President  
Overstock.com, Inc.  
6350 South 3000 East  
Salt Lake City, Utah 84121  
Tel: (801) 947-3100  
Fax: (801) 947-3144**

**Prepared by: Jody R. Westby, Esq.**

**April 24, 2012**

**Introduction** ..... 3

**I. History of Single Character Domain Names** ..... 3

**II. Pursuant to the recommendation of the Reserved Names Working Group, and its subsequent adoption by the GNSO Council and the ICANN Board of Directors, the proposed agreement for renewal of the 2006 .com Registry Agreement should be amended to allow the allocation of single-character domain names (SCDNs).** . . . . . 5

**III. Section 4.2 of the of the 2006 .com Registry Agreement requires that the terms of the renewal agreement be similar to the terms then generally in effect in the Registry Agreements of the five largest gTLDs; thus, the renewal agreement must be amended to allow .com allocation of SCDNs to bring it line with the terms of the .org, .info, .biz, and .mobi Registry Agreements** . . . . . 6

**IV. The proposed agreement for renewal of the 2006 .com should be amended to allow the allocation of SCDNs because Section 3.2(b) of the 2006 and renewal agreements (Covenants of ICANN) requires ICANN to provide equitable treatment to Verisign as a registry operator** . . . . . 7

**V. In accordance with ICANN Bylaws Articles I and II, the proposed agreement for renewal of the 2006 .com Registry Agreement should be amended to allow the allocation of SCDNs because ICANN is required to apply documented policies neutrally, objectively, and fairly and it is precluded from singling out any party for disparate treatment** . . . . . 8

**VI. An amendment to the .com renewal agreement to allow SCDNs would not create competition issues.** . . . . . 9

**VII. The proposed agreement for renewal of the 2006 Registry Agreement should be amended to remove single-character label domain names from the Schedule of Reserved Names in Appendix 6 so their allocation is not prohibited by Section 3.1(d) of the .com renewal Registry Agreement** . . . . . 9

**VIII. The proposed agreement for renewal of the 2006 Registry Agreement should include a provision that requires Verisign to put forth a proposal to ICANN, via the Registry Services Evaluation Process, on how the allocation of SCDNs would take place or, alternatively, allow Verisign to allocate SCDNs in the same manner as the new gTLDs** . . . . . 10

**IX. Conclusion** . . . . . 12

## Introduction

Overstock.com appreciates the opportunity to comment on the proposed agreement for renewal of the 2006 .com registry agreement. Overstock supports the proposed changes to the agreement, but desires to comment on the contractual provisions in the existing and proposed agreements that prohibit the allocation of single-character domain names (SCDNs). We are disappointed that the SCDN issue was not addressed in the renewal agreement and would like to respectfully request that ICANN consider amendments to the renewal agreement to allow the allocation of SCDNs for the reasons set forth in these comments.

### I. History of Single Character Domain Names

In historical terms, all single-character domain names (SCDNs) in legacy generic top-level domains (gTLDs) were not available for allocation because they were all reserved (with six already-registered exceptions: q.com, x.com, z.com, i.net, q.net, and x.org) by the former manager of the Internet Assigned Numbers Authority (IANA),<sup>1</sup> Jon Postel, in 1993. The six registrations have been grandfathered, and several of them have been transferred to other registrants or used for various purposes.<sup>2</sup>

ICANN stated in a 2005 background document that Mr. Postel reserved the names "to support the future extensibility of the domain name space."<sup>3</sup> The rationale is that in the early 1990s there was a concern that an increasing number of second-level domain registrations could put pressure on the DNS infrastructure, and that single-letter domains could be used to alleviate this pressure in future. For example, if domain name growth outstripped the infrastructure's ability to scale, businesses could be able to register third-level domains, such as company.a.com instead of company.com. This rationale is supported by historical emails from Mr. Postel himself.<sup>4</sup>

This earlier technical concern is no longer applicable, if it ever was. Verisign and others have proved that gTLD registries can easily scale to tens of millions of second-level domains. As noted in more detail below, the 2007 Final Report of the Reserved Names Working Group (RNWG), which was adopted by the GNSO Council and the ICANN Board of Directors, provided definitive policy guidance that ICANN has relied upon since to allow the allocation of SCDNs for numerous generic top-level domains (gTLDs).

---

1 IANA became a department of the Internet Corporation for Assigned Names and Numbers (ICANN) when it was established in 1998.

2 Liz Williams, *Reserved Names Working Group Final Report*, GNSO new TLDs Committee, May 23, 2007 at 67-68, <http://gns0.icann.org/issues/new-gtlds/final-report-RNWG-23may07.htm> (hereinafter "RNWG Report").

3 "Status report on Single Letter Domain Names," Sept. 12, 2005, <http://forum.icann.org/lists/gns0-RNWG/doc0lzYc2xyY2.doc>.

4 Email from Jon Postel, May 20, 1994, <http://marc.info/?l=namedroppers&m=95837824027192&w=2>.

## **The Final Report of the GNSO Reserved Names Working Group**

The RNWG was set up by the Generic Names Supporting Organization (GNSO) in January 2007. One of its many tasks was to discuss the release of SCDNs in legacy and new generic Top Level Domains (gTLDs). The RNWG's Final Report, published in May 2007, contains the following paragraph:

We recommend that single letters and digits be released at the second level in future gTLDs, and that those currently reserved in existing gTLDs should be released. This release should be contingent upon the use of appropriate allocation frameworks.<sup>5</sup>

The GNSO Council's Final Report on the Introduction of New Generic Top-Level Domains, which was approved with a supermajority vote of the GNSO Council in September 2007, accordingly stated:

In future gTLDs we recommend that single letters and single digits be available at the second (and third level if applicable).<sup>6</sup>

The ICANN Board of Directors then adopted the GNSO Council's recommendations, including the recommendation on SCDNs, in June 2008.<sup>7</sup>

This RNWG Final Report has been cited in every request by a gTLD registry to release SCDNs and has been used by ICANN's Board of Directors in approving such requests.

## **GNSO gTLD Registry Constituency Statement**

Existing gTLD registries have also expressed strong support for the release of SCDNs, as explained in their December 2007 "GNSO gTLD Registry Constituency Statement" on the Release of Single Character at the Second Level, which states in part:

Due to the fact that there are significant differences amongst the existing 16 gTLD registries, the RyC [Registry Constituency] recognizes that finding an appropriate allocation method (or methods) and determining potential uses of revenue is not an easy task. It is for this reason that there are significant differences that we strongly oppose a one-size fits all allocation method, both for existing registries and for future gTLD registries.

---

5 RNWG Report at 20, 67, <http://gns0.icann.org/issues/new-gtlds/final-report-RNWG-23may07.htm>.

6 Final Report – Introduction of New Generic Top-Level Domains, Generic Names Supporting Organization, Aug. 8, 2007, <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>; GNSO Council Teleconference Minutes, Generic Names Supporting Organization, Sept. 6, 2007, <http://gns0.icann.org/meetings/minutes-gns0-06sep07.html>.

7 Adopted Board Resolutions – Paris, Internet Corporation for Assigned Names and Numbers, June 26, 2008, [http://www.icann.org/en/groups/board/documents/resolutions-26jun08-en.htm#\\_Toc76113171](http://www.icann.org/en/groups/board/documents/resolutions-26jun08-en.htm#_Toc76113171).

For existing registries, the RyC believes that the best approach is to allow each operator or sponsor to choose its own method of allocation. We note that the Registry Services Technical Evaluation Process exists as one method for each registry to develop a fair, predictable and timely procedure for ICANN to handle requests for authorizations, approvals or consents required by our contracts or related contractual amendments. In short, we believe a process exists today to enable each existing gTLD registry or sponsor to implement an allocation method of single-digit domains in a manner most likely to be consistent to its individually delegated purpose and mission.<sup>8</sup>

While this is the statement of a single GNSO constituency, rather than coming from the community-at-large, it has nevertheless become the accepted view regarding allocation of SCDNs in legacy gTLDs.

### **Registry Services Evaluation Process (RSEP) Requests**

A substantial body of precedent for releasing SCDNs has been created since 2008 via the Registry Services Evaluation Process (RSEP). Most gTLD registries – and most of .com's direct competitors – have obtained approval from ICANN to allocate SCDNs using this process.

Following requests made via RSEP since 2008, ICANN has allowed the allocation of SCDNs via contractual amendments to many gTLDs Registry Agreements: .mobi, .coop, .travel, .biz, .pro, .cat, .info, .tel, and .org.<sup>9</sup>

### **II. Pursuant to the recommendation of the Reserved Names Working Group, , and its subsequent adoption by the GNSO Council and the ICANN Board of Directors, the proposed agreement for renewal of the 2006 .com Registry Agreement should be amended to allow the allocation of single-character domain names (SCDNs).**

At the time the RNWG was deliberating the release of SCDNs, all 16 ICANN Registry Agreements restricted the release of SCDNs at the second level. The RNWG analyzed the history of the reservation of the names, as well as earlier reasoning for the reservation, such as Postel's desire to hold the single characters in case they were needed for future extensibility of the Internet naming system (using the single letter to add an additional level) and IANA's claim that they were reserved for infrastructure purposes to ensure stability of the Internet. The RNWG also noted that single letter and number SCDNs were commonly used in country codes and as internationalized domain names (IDNs). Indeed, at that time, single characters were widely used in 63 TLDs.<sup>10</sup> This led the RNWG to conclude, "Therefore, we

---

8 GNSO Constituency Statement at 3, <http://forum.icann.org/lists/allocationmethods/pdfpiiMgSU2Ub.pdf>.

9 Registry Service Evaluation Process, ICANN, <http://www.icann.org/en/resources/registries/rsep>.

10 RNWG Final Report at 67-68.

presume there is no technical reason why remaining letters, at least, should be reserved.”<sup>11</sup> They did note that further examination of allocation options was needed.

In August 2007, the RNWG's recommendations were incorporated, in part, into the GNSO Council's Final Report on the Introduction of New Generic Top-Level Domains:<sup>12</sup>

In future gTLDs we recommend that single letters and single digits be available at the second (and third level if applicable).

The new *gTLD Applicant Guidebook* and the incorporated New gTLD Agreement contains no provisions to block, restrict or reserve SCDNs.<sup>13</sup> Thus, each of the hundreds of new gTLD registries expected to come online over the next few years will be able allocate SCDNs as they please. Two-character domains are restricted to avoid confusion with country code Top-Level Domains (ccTLDs). The lack of SCDN controls for all new gTLDs can be taken as conclusive proof that ICANN has no security or stability concerns or other reservations pertaining to single-character labels.

In sum, the issues surrounding SCDNs were thoroughly analyzed by the RNWG, and its recommendations were subsequently adopted by the GNSO and the ICANN Board of Directors. Its recommendation that single letters and digits be released at the second level in future gTLDs – and the reliance of this recommendation since then by registries and ICANN – is compelling and provides adequate reason to remove the prohibition in the renewal of the .com Registry Agreement.

**III. Section 4.2 of the of the 2006 .com Registry Agreement requires that the terms of the renewal agreement be similar to the terms then generally in effect in the Registry Agreements of the five largest gTLDs; thus, the renewal agreement must be amended to allow .com allocation of SCDNs to bring it line with the terms of the .org, .info, .biz, and .mobi Registry Agreements.**

Section 4.2 of the current 2006 .com Registry Agreement, requires the terms of the renewal agreement to be similar to the terms in the Registry Agreements of the five largest gTLDs (determined by the number of domain name registrations under management at the time of renewal):

Upon renewal, in the event that the terms of this Agreement are not similar to the terms generally in effect in the Registry Agreements of the 5 largest gTLDs (determined by the number of domain name registrations under management at the time of renewal),

---

<sup>11</sup> *Id.* at 68.

<sup>12</sup> *Final Report – Introduction of New Generic Top-Level Domains*, Generic Names Supporting Organization, Aug. 8, 2007, <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm> (hereinafter “gTLD Applicant Cookbook”).

<sup>13</sup> *gTLD Applicant Guidebook*, Version 2012-01-11, ICANN, Jan. 11, 2012, <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>.

renewal shall be upon terms reasonably necessary to render the terms of this Agreement similar to such terms in the Registry Agreements for those other gTLDs.

The five largest gTLDs, as measured by the number of domains under management today, are .net, .org, .info, .biz and .mobi. Of these, only the .net Registry Agreement (also managed by Verisign) contains a prohibition on SCDN delegations. The remaining four largest gTLDs had their SCDNs released following RSEP requests approved between November 2008 and March 2012. *Thus, all of Verisign's direct registry competitors' Registry Agreements do not restrict the allocation of SCDNs.*

The ability to allocate SCDNs is such an important term that other registries had to (1) file a RSEP proposal to obtain approval from ICANN, and (2) execute amendments to their Registry Agreements. Since Verisign is the only generic registry that does not have the ability to offer SCDNs, amendments to the .com renewal agreement are *reasonably necessary* in order for ICANN to uphold its obligations under Section 4.2 to render the terms of the renewal Registry Agreement similar to those of the four largest gTLDs. Since Section 4.2 specifically states that the renewal contract should have terms similar to the other largest gTLDs at the time of renewal, it would be against the intent of the provision to require Verisign to renew the .com Registry Agreement under existing terms and force it to file a RSEP proposal for approval.

**IV. The proposed agreement for renewal of the 2006 .com should be amended to allow the allocation of SCDNs because Section 3.2(b) of the 2006 and renewal agreements (Covenants of ICANN) requires ICANN to provide equitable treatment to Verisign as a registry operator.**

Verisign stands alone in terms of comparable gTLD operators when it comes to reserved single-character domains. Since 2008, ICANN has shown a willingness to remove restrictions on such domains for the majority of contracted gTLD registries and all of Verisign's direct competitors.

ICANN has entered into 18 gTLD Registry Agreements. Only six of the agreements dealing with live gTLDs – .aero, .com, .jobs, .museum, .name, .net – completely prohibit, without qualification, the delegation of SCDNs.

Of the six live gTLDs which continue to have SCDN restrictions, three are Verisign-operated (.com, .net and .name). Four of the six (.aero, .jobs, .museum, and .name) are classified by ICANN/IANA as "sponsored" or "generic-restricted" gTLDs. *The .com and .net agreements are both classified as merely "generic" gTLDs, and they are the only such gTLDs that continue to have reserved SCDNs.*<sup>14</sup>

---

<sup>14</sup> Internet Assigned Numbers Authority, Root Zone Database, <http://www.iana.org/domains/root/db/>.

The 2006 .com Registry Agreement and the proposed renewal agreement both contain a section entitled “Covenants of ICANN.” Section 3.2(b) pertains to Equitable Treatment” and provides that: “ICANN shall not apply standards, policies, procedures, or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.”

As noted above, the .com and .net agreements – both managed by Verisign – are the only generic gTLDs that continue to be prohibited from allocating SCDNs. Since earlier justifications for restricting SCDNs have been disposed of by the RNWG, there is no substantial and reasonable cause to continue to restrict Verisign from allocating SCDNs. In fact, retaining such a restriction in the renewal agreement would be tantamount to inequitable treatment in violation of ICANN’s covenants in the 2006 .com Registry Agreement.

**V. In accordance with ICANN Bylaws Articles I and II, the proposed agreement for renewal of the 2006 .com Registry Agreement should be amended to allow the allocation of SCDNs because ICANN is required to apply documented policies neutrally, objectively, and fairly and it is precluded from singling out any party for disparate treatment.**

ICANN is required to treat its contracted parties fairly and without unreasonable bias. Article I, Section 2(8) of ICANN's Bylaws states that ICANN should be guided by a "core value" of, "Making decisions by applying documented policies neutrally and objectively, with integrity and fairness."<sup>15</sup> Article II, Section 3, which pertains to non-discriminatory treatment, provides that, “ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.”<sup>16</sup>

These provisions in the Bylaws were tested before an international arbitration panel on one previous occasion. In 2010, an ICANN Independent Review Panel ruled that ICANN's Board of Directors should make decisions related to gTLD registries neutrally and objectively.<sup>17</sup>

If ICANN is to act in a neutral and objective manner, with fairness, and abide by its own Bylaws to apply its policies, procedures, and practices in an equitable and non-discriminatory manner, it must closely examine the disparity that exists between registries with respect to SCDNs. There is no substantial or

---

15 Bylaws for Internet Corporation for Assigned Names and Numbers, Article I: Mission and Core Values, Mar. 16, 2012, <http://www.icann.org/en/about/governance/bylaws#1>.

16 Bylaws for Internet Corporation for Assigned Names and Numbers, Article II, Section 3, Non-Discriminatory Treatment, Mar. 16, 2012, <http://www.icann.org/en/about/governance/bylaws#1>.

17 ICM Registry v ICANN, Declaration of the Independent Review Panel, para 152 at 70, <http://www.icann.org/en/news/irp/icm-v-icann/news/irp-panel-declaration-19feb10-en.pdf> (the Board’s reconsideration of that finding was not consistent with the application of neutral, objective and fair documented policy.”).

reasonable cause why Verisign should not be able to allocate SCDNs similar to the other generic registries.

Moreover, ICANN's Bylaws apply to all parties, which includes the Internet community. If the .com agreement is not amended to permit Verisign to allocate SCDNs, it also unfairly singles out the .com user community for disparate treatment, which impedes commerce and amounts to ICANN-constructed barriers within the DNS process.

**VI. An amendment to the .com renewal agreement to allow SCDNs would not create competition issues.**

Although, historically, competition concerns have been an issue with respect to Verisign's management of the .com gTLD, the release of less than 100 SCDNs would not create competition issues. ICANN did not find any competition issues with the other gTLD RSEP proposals to allocate SCDNs, and they would have had a few more to release than .com, which already has allocated three letters.

**VII. The proposed agreement for renewal of the 2006 Registry Agreement should be amended to remove single-character label domain names from the Schedule of Reserved Names in Appendix 6 so their allocation is not prohibited by Section 3.1(d) of the .com renewal Registry Agreement.**

Section 3.1(d)(i) of both the current and renewal .com Registry Agreements restricts Verisign from reserving or registering any TLD strings that appear on Appendix 6 of Registry Agreement, Schedule of Reserved Names. The Schedule of Reserved Names includes "all single character labels." Since Appendix 6 remains unchanged in the proposed renewal agreement, Verisign is precluded from offering SCDNs to the .com community.

Based upon the RNWG Final Report's recommendation, and its subsequent adoption by the GNSO and the ICANN Board of Directors, ICANN should remove this entry from Appendix 6 of the renewal agreement to enable Verisign to allocate SCDNs. As noted above, it would not be equitable or in line with the 2006 .com Registry Agreement's renewal provisions requiring similarity of Registry Agreement terms among the major registries to retain this restriction in Appendix 6 in the renewal agreement.

**VIII. The proposed agreement for renewal of the 2006 Registry Agreement should include a provision that requires Verisign to put forth a proposal to ICANN, via the Registry Services Evaluation Process, on how the allocation of SCDNs would take place or, alternatively, the renewal agreement should allow Verisign to allocate SCDNs in the same manner as the new gTLDs.**

Neustar's RSEP application for the release of SCDNs in October 2008 was the first such RSEP request to propose auctions as an equitable allocation mechanism. It also proposed an RFP process (for which Overstock, with o.biz and 0.biz, was the only applicant) and a first-come-first-served mechanism for any domains that failed to sell at auction.<sup>18</sup> Ultimately, apart from the Overstock domains, all SCDNs in .biz were allocated via auction.

ICANN found no security, stability or competition concerns with Neustar's application. It posted the matter for public comment, and then referred it to the Board of Directors. In *unanimously* approving the RSEP in May 2009, the Board, having considered the pricing implications of the auction at some length, noted "the proposed release of single and two-character domain names in .BIZ would be consistent with the recommendations of the GNSO Reserved Names Working Group and other approvals to permit the release of single and two-character domain names."<sup>19</sup>

As well as removing SCDNs from the Schedule of Reserved Names, the approved amendment to the .biz Registry Agreement created an exception to pricing controls for SCDNs:

The domain names allocated via the Phased Allocation Program are an exception to the Maximum Service Fee described in Section 7.3(a) of the .BIZ Registry Agreement.<sup>20</sup>

Subsequently, ICANN has received and approved RSEP requests from .travel, .pro, .cat, .info, .tel, and .org. Approving such requests has now been recognized as "non-controversial." The Public Interest Registry's (PIR) RSEP proposal for one and two character name allocation was filed on September 27, 2011, and notification of approval was sent on March 2, 2012. Karla Valente, ICANN's Director of gTLD Registry Programs, noted in her letter to the PIR that:

ICANN's preliminary determination did not identify any significant competition or security and stability issues. Furthermore, similar requests have been approved for other gTLD

---

18 Neustar .BIZ RSEP, <http://www.icann.org/en/resources/registries/rsep?page=3>; ICANN Registry Request Service, Ticket ID: X7H5N-5U8A6 at 3, <http://www.icann.org/en/resources/registries/rsep/Neustar-request-2008010-31oct08-en.pdf>.

19 Minutes of the Special Meeting of the ICANN Board of Directors, May 21, 2009, <http://www.icann.org/en/groups/board/documents/minutes-21may09-en.htm>.

20 Preliminary Report Resolutions of Special Board Meeting, May 21, 2009, <http://www.icann.org/en/groups/board/documents/prelim-report-21may09-en.htm>.

registries. PIR may proceed with the allocation of One and Two-Character Names based upon this framework.<sup>21</sup>

An additional allocation consideration involves possible “bundling” of similar single character numbers and letters to avoid confusion among different owners of similar characters, such as the letter l and the number 1. The RNWG’s Final Report makes reference for the potential for confusion between different SCDNs:

There may be potential user confusion from mistaking certain single letters and digits at the top level due to visual similarity (i.e., 1.com versus l.com, m.com versus n.com, q.com versus g.com).<sup>22</sup>

Thus, it is reasonable that confusingly similar SCDNs be “bundled” and sold as a pair. For example, Overstock.com bought 0.info and o.info and o.biz and 0.biz in bundled negotiations with the registries. Likewise, country registrars have sold similar characters as a bundle, such as Overstock’s purchase of o.co and 0.co from the Columbian cc-TLD. The o.biz and 0.biz SCDNs purchased from Neustar were the only two SCDNs that were not sold at auction.

The most common method of allocation for SCDNs is for registries to use a RFP process to select auction platforms to facilitate the allocation of the names. The SCDNs are then offered via auction to registrants who are committed to building the domain with a sound marketing and branding strategy. Below is a table that summarizes the various SCDN allocation mechanisms that have been approved by ICANN for used in other gTLDs.

gTLD	RFP?	AUCTION?	Registry Use?	First Come-First Served?	Premium?
.mobi	Yes	---	---	---	---
.coop	Yes	---	---	---	---
.travel	Yes	Yes	Yes	Yes	---
.biz	Yes	Yes	---	Yes	---
.pro	Yes	Yes	---	Yes	---
.cat	Yes	---	---	---	---
.info	Yes	Yes	---	Yes	---
.tel	Yes	---	Yes	Yes	Yes

21 Proposal 2011004, Email from Karla Valente to David Maher, Mar. 1, 2012, <http://www.icann.org/en/resources/registries/rsep>.

22 *Id.*

gTLD	RFP?	AUCTION?	Registry Use?	First Come-First Served?	Premium?
.org	Yes	Yes	---	---	---

Mindful of the RNWG’s note in its recommendation that the release of SCDNs should be contingent upon appropriate allocation methods, ICANN may continue to have an interest in how registries allocate SCDNs. We propose that the .com renewal Registry Agreement be amended to require Verisign to submit a proposal to ICANN regarding allocation or, alternatively, the renewal agreement should allow Verisign to allocate SCDNs in the same manner as new gTLDs.

**IX. Conclusion**

Although SCDNs were initially reserved for various reasons as the Internet and Domain Name System were being established, these early technical justifications for such reservations have been thoroughly discredited by the growth and seamless scalability of registries, including Verisign. Furthermore, the conclusions and recommendations of the RNWG, and their subsequent adoption by the GNSO Council and the ICANN Board of Directors, as well as ICANN’s approval of nine gTLDs to allocate SCDNs, have removed any policy barrier to further SCDN releases. Initial concerns regarding appropriate allocation of the SCDNs have been quieted as the GNSO Registry Constituents’ statement, that the best methods for allocation for SCDNs could be determined through the RSEP process, has proven to be sound.

ICANN’s nine registry approvals for allocation of SCDNs occurred after the 2006 .com Registry Agreement was executed. It is nonsensical to carry this restriction forward in the .com renewal agreement. Not only would it block the largest registry from releasing SCDNs to the Internet community, it also creates an unfounded barrier to businesses who desire SCDNs for the advancement of their marketing strategy and branding.

Section 4.2 of the 2006 agreement requires that the renewal shall be upon terms reasonably necessary to render it in alignment with terms of the five largest gTLDs (.net, .org, .info, .biz and .mobi). Other than .com, only .net’s Registry Agreement (which is also managed by Verisign) contains a prohibition on SCDN delegations. ICANN has approved the release of SCDNs for the other four largest gTLDs via RSEP proposals between November 2008 and March 2012 and amended the contractual terms of their Registry Agreements. Since all of Verisign’s competitors are allowed to release SCDNs, the .com renewal agreement should be similarly modified to allow Verisign the same right.

The Internet community relies upon a transparent and fair process, which ICANN has agreed to via Covenants of equitable treatment within Registry Agreements. Verisign gTLDs are clearly subject to unique treatment by ICANN – no other unrestricted gTLDs have the same prohibitions on SCDNs as .com and .net. ICANN is obligated to abide by its covenant in Section 3.2(b) of the 2006 .com Registry Agreement to provide equitable treatment to all registry operators. If the renewal agreement does not allow Verisign to allocate SCDNs, ICANN may appear to be acting arbitrarily, unjustly, or inequitably toward Verisign or singling it out for disparate treatment in direct violation of the Registry Agreement and Articles I and II of its Bylaws.

By removing “single character labels” from the Schedule of Reserved Names on Appendix 6 of the renewal agreement and including a provision regarding application via RSEP for ICANN approval of an allocation process or allowing it to allocate them the same as new gTLDs, the .com renewal terms would place Verisign on equal footing with the other largest registries.