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By E-Mail to comments-com-amendment-30jun16@icann.org

Internet Corporation for Assigned Names and Numbers

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094-2536

Re: Public Comment on Proposed Amendment to .COM Registry Agreement

Dear ICANN:

I am writing on behalf of the members of the Internet Commerce Association (ICA). 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.

This letter addresses the “Public Comment on Proposed Amendment to .COM Registry Agreement” that was [published](#) for public comment on June 30, 2016.

Executive Summary

- ICA has no objection to the proposed .Com RA extension as it simply provides the same additional six year contract term that Verisign would be entitled to in 2018 under its contractual right of presumptive renewal. It will have the salutary effect of preventing GDD staff from attempting to impose the URS and other new gTLD RPMs on .Com during a time when an active ICANN Working Group is exploring the policy question of whether any of these RPMs should become Consensus Policy applicable to legacy gTLDs.
- Our non-objection is based on our understanding that the contract term extension will have no impact on the pricing of .Com domains, as the current price freeze they are subject to is contained in the separate Cooperative Agreement between Verisign and the NTIA.
- While we have no general objection to ICANN's practice of non-interference with the pricing policies of gTLD registries, we do believe that any registry's abuse of pricing power should weigh against its right of presumptive renewal. We therefore believe that ICANN should amend all registry contracts to make clear that, at a minimum, a registry operator subject to successful government action for violations of antitrust or competition laws should face competitive rebid of its contract. Such amendment would further discourage all gTLD registries from engaging in abusive and anticompetitive market conduct.
- While the proposed RA extension is justified by the present intermingling of .Com and Root Zone technical operations, given that the related RZMA between ICANN and Verisign contemplates the possibility of future termination or transition, we would urge ICANN to take steps to assure that the intermingling does not continue to such an extent that would make the exercise of those options technically infeasible or contrary to the security and stability of the DNS.

.Com RA Extension

The ICA has no objection to the proposed extension of the .Com Registry Agreement (RA) from November 30, 2018 to November 30, 2024. The current .Com RA provides Verisign with a right of presumptive renewal provided that it does not commit a material breach of the RA and subsequently refuses to cure such breach when put on notice by ICANN. Verisign's technical management of the .Com registry has been exemplary and we expect that level of performance to continue. It is also inconceivable to us that Verisign would commit and fail to cure a material breach of the .Com RA when it derives the majority of its revenues from its operation. Therefore, given that renewal of the .Com

RA for a six-year term is virtually assured to take place in 2018, we see no basis for objecting to taking that action two years in advance.

Further, changing the end date of the .Com RA through an extension now rather than a renewal in two years will have the salutary effect of depriving ICANN Global Domain Division (GDD) staff of any opportunity to seek the imposition of Uniform Rapid Suspension (URS) or any other new gTLD Rights protection Mechanisms (RPMs) through contractual imposition as they did in 2105 in regard to the RAs for .Cat, .Pro, and .Travel. While the Board later [stated](#), in approving the amended RAs, that *“the Board's approval of the Renewal Registry Agreement is not a move to make the URS mandatory for any legacy TLDs, and it would be inappropriate to do so”*, we have no assurance that GDD staff does not still hold its previously stated position that, *“With a view to increase the consistency of registry agreements across all gTLDs, ICANN has proposed that the renewal agreement be based on the approved new gTLD Registry Agreement as updated on 9 January 2014.”* Further, notwithstanding Reconsideration Requests filed with the Board Governance Committee (BGC) by ICA, the Business Constituency (BC), and the Non-Commercial Users Constituency (NCUC), the BGC let the imposition of URS by ICANN staff via contract renegotiation stand.

Extending the .Com RA through 2024 through the proposed extension, rather than via a negotiated renewal, will preserve the question of whether the URS and other new gTLD RPMs should become Consensus Policies applicable to legacy gTLDs for decision by the Working Group established to review all RPMs at all gTLDs – which is precisely where this key policy question should be fully and objectively considered and decided by the ICANN community.

Other RA Amendments

In addition to the RA extension, we have no objection to the “Future Amendments” provision that requires ICANN and Verisign to cooperate and negotiate in good faith to, within two years, amend the RA to “preserve and enhance the security and stability of the Internet or the TLD” and “as may be necessary for consistency with changes to, or the termination or expiration of, the Cooperative Agreement between Registry Operator and the Department of Commerce”.

.Com Pricing

Our non-objection to the RA extension and the other proposed amendments is based upon our understanding, based in part upon public statements made by Verisign executives, that it will have no effect whatsoever upon the current .Com wholesale price freeze of \$7.85 [imposed](#) on Verisign by the National Telecommunications and Information Administration (NTIA) on November 29, 2012.

It is our understanding that NTIA will review the proposed term extension and other amendments of the .Com RA if approved by the ICANN Board. Amendment 32 to the Cooperative Agreement (CA) between NTIA and Verisign, which imposed the .Com price freeze, provides Verisign with the right to petition “for relief from price restrictions if it can demonstrate that it no longer has market power”. It is our view that, notwithstanding the recent introduction of hundreds of new gTLDs, Verisign still retains extensive market power in regard to .Com domains, as .Com remains the “gold standard” of all gTLDs as demonstrated by both registry growth and secondary market pricing. Further, even with the price freeze in place, Verisign recently reported a remarkable 64% Non-GAAP Operating Margin, enviable \$700 million in free cash flow, and the use of a substantial portion of that cash for a continuing and aggressive stock repurchase program. Therefore, it appears that the operation of .Com is extremely lucrative even with the price freeze in place.

Presuming that the NTIA solicits public comment in conjunction with its review of the proposed .Com RA amendments, we shall likewise communicate our non-objection to approval provided that such NTIA approval in no way results in a relaxation of the price restrictions at this time.

Potential Termination/Extension of the Cooperative Agreement

As noted above, one of the proposed RA amendments relates to the potential expiration or termination of the Cooperative Agreement (CA) between NTIA and Verisign when it reaches its renewal date in 2018. Given that the majority of the CA covers the RZMA functions that will likely soon be performed for ICANN by Verisign under a new Root Zone Maintainer Service Agreement (RZMA), and that the .Com price restrictions are also contained in the CA, we recognize the possibility that the CA may be permitted to expire in 2018.

We shall reserve any comment to NTIA on that possibility, and whether the .Com pricing restrictions should be altered or extended in any form beyond 2018, until that year arrives and based upon prevailing market and other relevant conditions at that time.

Presumptive Renewal and Abuse of Pricing Power

We recognize that ICANN lacks the economic and legal expertise, and has no desire, to regulate the pricing practices of the registries with which it has contractual relationships. However, ICANN and those contracted parties are all subject to U.S. antitrust law at present -- and may face greater exposure upon the consummation of the IANA transition, at which time ICANN's remaining official ties with the U.S. Government will be terminated and it will no longer have any claim to being an instrumentality of U.S. government policies. ICANN and its contracted parties may also have legal exposure to

competition laws and regulations in other jurisdictions in which they are incorporated, headquartered, or operate.

For all these reasons, as well as the potential expiration of the CA between NTIA and Verisign, ICA believes that the ICANN community should begin a discussion of whether and under what conditions, other than material uncured contract breach, a registry should lose its right of presumptive renewal and face competitive market testing of its pricing policy through a rebid process. Such a possibility should certainly exist if a registry has been found by a court, or has admitted in a judicial or regulatory proceeding, to abuse of pricing power in violation of antitrust or competition laws, as ICANN is pledged to operate in the global public interest and as registries should carry out that same obligation via their contracts with ICANN and refrain from illegal conduct in their pricing and competitive activities. There may also be other circumstances beyond a finding or admission of illegal conduct that would justify competitive rebid of a registry contract, and that should be considered as this subject is addressed.

This issue is of importance not just to the domain investor and developer members of the ICA but to other large portfolio owners of legacy and new gTLD domains, including trademark owners with extensive protective and defensive domain portfolios, as well as the general public. It is also important to millions of ordinary domain registrants for reasons other than price, given that there are substantial switching costs and other potential detriments to relocating to a new domain when subject to exorbitant price increases.

Relationship of RZMA and .Com

The rationale for the extension of the .Com RA in conjunction with the implementation of the new RZMA between ICANN and Verisign is the currently intertwined technical nature of root zone and .com operations. As explained in a June 28th [blog](#) by GDD head Akram Atallah:

NTIA recognized that root zone management aspects of the IANA functions contract are “inextricably intertwined” with the Cooperative Agreement. Given the unified nature of the present Cooperative Agreement, much of the root zone infrastructure itself is “inextricably intertwined” with Verisign’s TLD operations for .com: the servers that provide root services are hosted at every .com resolution site (over 100 locations). These servers share bandwidth, routing and monitoring with the .com operations, and the servers use the same code base as the .com TLD name servers and are operated and maintained by the same operation and engineering group. On the provisioning side, the root zone’s provisioning system is derived from the .com Shared Registration System (SRS), using the structure, schema, and software used for .com provisioning operations. Verisign

builds and signs the root zone today using the same cryptographic facilities used for .com as well as signing software derived from that used for signing .com. Importantly, Verisign's root zone operations are also within the .com's Denial of Service attack detection and mitigation framework including independent internal and external monitoring and packet filtering at all layers. A key component of ensuring security of the root operations was making sure that those operations continued to benefit from its historic association with the .com operations.

While that technical intertwining provides a sufficient rationale for a .Com RA extension at this time, we note that the proposed [RZMA](#) contemplates the possibility of termination or transition of the root zone functions away from Verisign to another provider under certain circumstances. Although that possibility may be quite remote, we believe it would be advisable for ICANN technical staff to begin exploring how some practical separation between root zone and .Com technical operations might be achieved if that eventuality ever arises, and to assure that such action does not pose a threat to the security and stability of the DNS.

Conclusion

We appreciate the opportunity to provide these comments on the proposed extension of the .Com RA. We hope they are helpful to the further consideration of this matter by ICANN and its community.

Sincerely,

Philip S. Corwin

Counsel, Internet Commerce Association

