



Donuts' Comment on Proposed Amendment to .COM Registry Agreement

Donuts appreciates the opportunity to comment on the proposed extension of ICANN's registry agreement with Verisign regarding the .COM top-level domain.

Donuts is opposed to the extension of ICANN's agreement with Verisign in its proposed form. By simply renewing the .COM agreement under its current terms, ICANN and Verisign will have missed a significant opportunity to fulfill ICANN's self-defined mandate to increase competition in the DNS marketplace and preserve the security, stability and resiliency of the DNS by bringing provisions of the .COM agreement more in harmony with the contracts governing new gTLDs and many other legacy gTLDs that recently have been renewed.

It is particularly disappointing that ICANN and Verisign chose not to update the .COM agreement with these consumer safeguards. The ultimate outcome here will be harm to consumers and the disparate treatment of ICANN's other contracted parties to their detriment. ICANN should not put off fulfillment of this core mandate until the next decade. At the conclusion of this comment period, the two parties still have the ability, if not the obligation, to seize this opportunity or risk failure of a critical element of their joint mission.

By not modifying the existing .COM registry agreement, ICANN cannot meet its obligations to enable competition or to avoid disparate treatment

Article 4 of ICANN's Articles of Incorporation requires ICANN to:

operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes **that enable competition** and open entry in Internet-related markets. (emphasis added)

Further, ICANN's bylaws require that its Board and staff:

Ensure that it does "**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." (emphasis added)

Verisign has enjoyed and continues to enjoy near domination over the domain name marketplace through its stewardship of .COM and .NET. On July 28, 2016, Verisign reported that the combined registrations for these two gTLDs exceeded 143 million, *more than six times greater* than the combined total registrations for *all other existing gTLDs* (approximately 23 million).

The new gTLD program was intentionally designed, in part, to finally bring competition to this monopolistic situation. While new gTLDs have performed impressively to date, they remain significantly lower than .COM in terms of registration numbers.

While ICANN obviously is not responsible for the historic growth in .COM registrations, it is duty-bound to provide a level playing field for competitors that have taken on significant risk to enter the

market, especially as the United States Department of Justice has confirmed Verisign's market power in the domain name industry.¹

It is well known that new gTLDs and now many other legacy gTLDs are heavily vested with abuse protections that .COM is not. Thus, smaller, less resource-rich competitors must manage gTLDs laden (appropriately) with additional responsibilities, while Verisign is able to operate its domains unburdened from these safeguards. This incongruence is a precise demonstration of disparate treatment, and one that actually hinders effective competition and ultimately harms consumers.

The existing .COM registry agreement does not compel Verisign to protect the public interest

Considering the long and thorough process used by the ICANN community to craft and implement these consumer safeguards, and ICANN's advocacy for them, it's surprising, and somewhat suspect, that ICANN is completely disregarding the obvious need for identical protections in .COM.

The competitive imbalance aside, evidence indicates not only would it be wise to add further protections to .COM, it should be regarded as a matter of urgency:

- In one month alone—May 2015—more than $\frac{3}{4}$ of new phishing reports documented abuse in a .COM registration ²
- .COM is by far the “most abused” TLD in terms of spam, malware and other abuses, according to data aggregator SURBL.³
- .COM names account again for more than $\frac{3}{4}$ of all cybersquatting complaints to WIPO under UDRP.⁴

One would believe that Verisign and ICANN know better than to allow—until 2024, a proposed eight additional years—abuses to run rampant in .COM without taking advantage of a window of opportunity to address ongoing and substantial harm to consumers suffered in .COM.

The lack of a proposed update to Verisign's contract is particularly puzzling in light of the significant changes proposed for the operation of many legacy TLDs, including .TEL⁵, .CAT⁶, .TRAVEL⁷ and .PRO⁸. Suggested changes to the .TEL agreement, according to ICANN, for example, will transform it into one that is “similar to the terms of a Registry Agreement for a new gTLD,” which of course includes implementation of safeguards present in new gTLDs.

It is mystifying that ICANN and many other legacy registries are harmonizing the other legacy contracts with those of the new gTLDs, yet this effort has not been undertaken for the .COM registry. Why?

Disparate treatment should not stand

Regrettably, ICANN has an apparent tendency to carry out its obligations in a cursory manner with regard to Verisign. For example, it has been alleged that Verisign, in contravention of requirements in the Applicant Guidebook (Sections 1.2.7, 6.1 and 6.10), intentionally did not disclose that it was the

¹ <https://www.icann.org/en/system/files/files/strickling-to-dengate-thrush-16jun11-en.pdf>

² <http://domainnamewire.com/wp-content/Architelos-StateOfAbuseReport2015.pdf>

³ <http://www.surbl.org/tld>

⁴ http://www.wipo.int/amc/en/domains/statistics/gtlds_yr.jsp?year=

⁵ <https://www.icann.org/public-comments/tel-renewal-2016-08-04-en>

⁶ <https://www.icann.org/public-comments/cat-renewal-2015-05-28-en>

⁷ <https://www.icann.org/public-comments/travel-renewal-2015-05-12-en>

⁸ <https://www.icann.org/public-comments/pro-renewal-2015-05-28-en>

true owner of rights to Nu Dot Co's application for .WEB before it prevailed in ICANN's auction for the .WEB gTLD. After Donuts and others notified ICANN of their suspicions prior to the auction, ICANN failed to satisfactorily investigate what eventually came to light, and strenuously opposed its own accountability mechanisms seeking to shed light on that relationship.

Given these recent failings and Verisign's market dominance, ICANN should handle the .COM registry agreement renewal and other dealings with Verisign with appropriate care, and would be wise to seize every opportunity to demonstrate to the community and the public at large that it and Verisign are, in fact, working in furtherance of the public interest.

Conclusion

We encourage ICANN to collaborate with Verisign to modernize its registry agreement and level the competitive playing field by adding the same consumer safeguards that all the new gTLDs and many legacy gTLDs already have in their agreements. To do otherwise would not be in the public interest.

Thank you for the opportunity to comment on this matter.