

# Report of Public Comments

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|--|--|------------------------------------|-------------------------|
| <b>Title:</b>  | <b>Proposed Renewal of .INFO gTLD Registry Agreement</b> |                                    |                         |
| <b>Publication Date:</b>   | 13 August 2013   |                                    |                         |
| <b>Prepared By:</b>  | Karla Valente  |                                    |                         |
| <b>Comment &amp; Reply Periods:</b>  |  | <b>Important Information Links</b> |                         |
| Open Date:   | 3 June 2013 & 25 June 2013                               |                                    | Announcement            |
| Close Date:  | 24 June 2013 & 15 July 2013                              |                                    | Public Comment Box      |
| Time (UTC):  | 23:59  |                                    | View Comments Submitted |
| <b>Staff Contact:</b>  | Cyrus Namazi   | <b>Email:</b>                      | cyrus.namazi@icann.org  |
| <b>Section I: General Overview and Next Steps</b>  |  |                                    |                         |
|  |  |                                    |                         |
| <b>Section II: Contributors</b>  |  |                                    |                         |
| <p><i>At the time this report was prepared, a total of [number] (n) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.</i></p>                                 |  |                                    |                         |
| <u>Organizations and Groups:</u>   |  |                                    |                         |
| <b>Name</b>  | <b>Submitted by</b>                                      | <b>Initials</b>                    |                         |
| Verisign, Inc. (Verisign)  | Keith Drazek, Director of Policy                         | KD                                 |                         |
| <u>Individuals:</u>  |  |                                    |                         |
| <b>Name</b>  | <b>Affiliation (if provided)</b>                         | <b>Initials</b>                    |                         |
| Chris Chaplow  | Managing Director, Andalucia.com S.L.                    | CC                                 |                         |
| <b>Section III: Summary of Comments</b>  |  |                                    |                         |
| <p><i>General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).</i></p> |  |                                    |                         |
| <u>Renewal (Section 4.2)</u>   |  |                                    |                         |
| ICANN should provide a detailed explanation clarifying both the nature and scope of the proposed change in language in Section 4.2.  |  |                                    |                         |

- The section 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.

*Verisign (24 June 2013)*

#### Resolution of Disputes (Section 5.1)

This section 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. The newly proposed mediation requirement is poorly defined and suffers from the same deficiencies as the mediation provisions in the proposed new gTLD Agreement:

- (a) no mechanism is proposed in the event the 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.

*Verisign (24 June 2013)*

#### Change in Control (Section 6.3)

This new section was added to mirror terms of the most recently proposed draft of the new gTLD Registry Agreement to 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. 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.” 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.

*Verisign (24 June 2013)*

#### Access to Registry Services (Section 7.1(a))

This section was amended to include a new provision requiring Afiliias 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 Afilias that registrars representing 67% of the registrations in the TLD have executed the 2013 RAA.

- 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. Contrary to the established procedure for consideration of proposed RRA amendments, 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.
- 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.

*Verisign (24 June 2013)*

RSEP 2008008--“Phased Equitable Reallocation of Non-Compliant .INFO Sunrise Domain Names”

The ICANN Board should take the opportunity of the .INFO contract renewal to request a review of the implementation of RSEP 2008008. Afilias has implemented RSEP 2008008 in a dubious manner.

- Only 85 of 1,231 names were allocated under Phase 1: Request for Proposals. Afilias unilaterally discarded the remaining RFPs in order to gain financial advantage by moving directly into Phase 2: Auction in December 2012, thus collecting the auction income.
- Of the 85 names that were allocated in April 2011, most are now for resale, do not resolve or redirect, demonstrating noncompliance with the RFP. Afilias has ignored my request to enforce the terms of its own RFP. ICANN compliance advises me that “ICANN does not have authority to require Afilias to enforce this language.”
- Afilias has not been transparent and has not kept the community informed about the process.

*C. Chaplow (24 June 2013)*

#### **Section IV: Analysis of Comments**

*General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.*

Renewal (Section 4.2)

The substantive changes to the renewal provision in Section 4.2 clarify the conditions to renewal of the Agreement and provide for a mechanism through which ICANN and Registry Operator will resolve

disputes regarding the terms and condition of the Agreement upon any future renewal of the term of the Agreement. Like other registry agreements, the current registry agreement for .INFO, provides for presumptive renewal so long as certain requirements are met. The agreement also provides that upon renewal, changes may be made to render the terms similar to other comparable agreements.

#### Resolution of Disputes

ICANN believes mediation is a beneficial dispute resolution mechanism as it facilitates discussions and compromise between the parties. In addition, the provisions were drafted to provide flexibility to the parties and the mediator to craft proceedings best suited to reach an amicable resolution of a dispute. ICANN notes that the mediation provision included in the New gTLD Registry Agreement, and proposed to be included in the .INFO Registry Agreement, was the subject of several rounds of public comment and discussion. These comments were factored into the language ultimately adopted in the New gTLD Registry Agreement, and proposed here.

#### Change of Control

The change of control provision proposed in the .INFO Registry Agreement, and already adopted in the New gTLD Registry Agreement has been substantially revised over time to address concerns relating to ICANN's consent over change of control transactions. As revised, ICANN cannot void such transactions (or prevent their occurrence), but may terminate the Registry Agreement in circumstances where ICANN withholds its consent to an assignment via change of control. ICANN acknowledges the concerns raised in the comments, and notes that the provision provides for the general parameters under which parties will seek consent to assignments, etc. A precise listing of each item or procedure that will be followed when analyzing requests is inappropriate as such listings and procedures are likely to evolve over time, as the marketplace develops and as ICANN and the registry community become accustomed to making and responding to such requests in a prudent manner.

#### Access to Registry Services (Section 7.1(a))

ICANN takes note of the comments raised regarding the new provision included in the .INFO Registry Agreement to facilitate the transition of its registrars to the 2013 Registrar Accreditation Agreement approved by the ICANN Board. The new provision was included to help expand the benefits of the 2013 RAA.

#### RSEP 2008008--"Phased Equitable Reallocation of Non-Compliant .INFO Sunrise Domain Names"

ICANN takes note of the comments raised regarding RSEP 2008008.