



December 23, 2004

VIA FACSIMILE  
AND ELECTRONIC MAIL

John Jeffrey, Esq.  
General Counsel  
International Corporation for Assigned Names and Numbers (ICANN)  
4676 Admiralty Way, Suite 330  
Marina del Rey, CA 90292-6601

Re: .Net Request for Proposals

Dear John:

Please allow this letter to provide VeriSign's notice that ICANN's recently released *.NET Request for Proposals* ("RFP") does not comply with section 4.3 of the .net Registry Agreement ("net Agreement"), and the RFP is not based upon a valid consensus. The failure to follow the consensus policy requirements constitutes a material breach by ICANN of the .net Agreement.<sup>1</sup>

**I. The RFP Should Have Been Developed Pursuant to Consensus Policy Requirements.**

As ICANN has recognized, section 5.2.4 of the .net Agreement requires that the RFP be developed pursuant to the consensus policy requirements set forth in section 4.3 of that agreement. See Section 5.2.4 ("ICANN shall select as the successor Registry Operator the eligible party that it reasonably determines is best qualified to perform the registry function under the terms and conditions developed pursuant to Subsection 4.3 [regarding consensus policies] of this Agreement . . .").

For example, in Resolution 04.18, adopted at its March 6, 2004 meeting, the ICANN Board resolved to refer responsibility for developing the RFP by consensus policy to the Generic Names Supporting Organization Council ("GNSO"). More specifically, in his March 31, 2004 letter, ICANN Vice President Paul Verhoef requested guidance from the GNSO "concerning the criteria for designating a successor operator for .net" because

---

<sup>1</sup> The RFP must not only meet the criteria for a valid consensus policy, but it must also comply with the other provisions of the .net Agreement. The current RFP fails on both counts.



John Jeffrey  
December 23, 2004  
Page 2

“section 5.2.4 of the .net Registry Agreement . . . calls for the establishment of a consensus policy regarding the identification and definition of these criteria.” The GNSO subsequently attempted to develop a consensus for the RFP, ultimately voting on August 5, 2004, to approve its *Final GNSO Report July 2004* as a “consensus statement.”

In its announcement dated November 12 regarding the draft RFP, ICANN stated that “the draft .NET RFP has been developed by adopting the recommendation from the GNSO Council.” In the draft RFP, ICANN stated that “the RFP selection criteria are based primarily on the GNSO Council’s consensus recommendation concerning the criteria for designating a successor operator for the .NET registry.” And, in its December 5, 2004 resolution adopting the final RFP, the ICANN Board again confirmed the necessity of a consensus policy, stating that it “adopts the recommendation of the GNSO Council.”

Throughout the process, therefore, ICANN has acknowledged that any RFP must be developed pursuant to the consensus policy requirements. Despite this acknowledgment, however, ICANN has issued an RFP that breaches the .net Agreement because, among other things, it was not based upon a valid consensus.

## **II. The RFP Was Not Adopted Pursuant to Consensus Policy Requirements.**

Section 4.3.1 of the .net Agreement defines “Consensus Policies” as

those specifications or policies established based on a consensus among Internet stakeholders represented in the ICANN process, as demonstrated by (a) action of the ICANN Board of Directors establishing the specification or policy, (b) a recommendation, adopted by at least a two-thirds vote of the council of the ICANN Supporting Organization to which the matter is delegated, that the specification or policy should be established, and (c) a written report and supporting materials (which must include all substantive submissions to the Supporting Organization relating to the proposal) that (i) documents the extent of agreement and disagreement among impacted groups, (ii) documents the outreach process used to seek to achieve adequate representation of the views of groups that are likely to be impacted, and (iii) documents the nature and intensity of reasoned support and opposition to the proposed policy.

In short, a valid “consensus” requires, among other things, that the GNSO solicit and document input from all impacted groups and then either adjust the policy to address dissenting opinions or explain why the dissenting opinions were not incorporated into the policy.



John Jeffrey  
December 23, 2004  
Page 3

The process by which the .net RFP was developed fails to satisfy these requirements. This is demonstrated by: (i) the GNSO's failure -- in the face of widespread, intense, and reasoned opposition -- to achieve a consensus level of support for its recommendation; (ii) the GNSO's failure to document either the extent of agreement and disagreement among impacted groups or the nature and intensity of reasoned opposition to the RFP (or otherwise to provide concrete reasons supporting the position that affirmative support is widespread); (iii) the GNSO's failure to undertake or to document sufficient outreach to achieve adequate representation of the views of impacted groups; (iv) the GNSO's failure meaningfully to address or to provide feedback on substantive submissions received; and (v) the GNSO's failure to include all substantive submissions received in its final report.

Accordingly, pursuant to section 4.3.2 of the .net Agreement, VeriSign requests review of this issue by a three-person Independent Review Panel duly established under ICANN's bylaws. From recent comments by ICANN in its *Strategic Plan* and elsewhere ICANN currently does not have an Independent Review Panel ("IRP"). If and when a valid IRP is established, VeriSign will provide further information to that panel pursuant to the terms of section 4.3 of the .net Agreement.

This letter only addresses issues with respect to ICANN's failure to establish the RFP pursuant to consensus policy requirements. The RFP additionally fails to comply with other requirements of (or resulting from) the .net Agreement.<sup>2</sup> This letter is without prejudice to -- and VeriSign expressly reserves -- all of its rights with respect to the RFP, including, without limitation, the right to challenge the RFP for non-compliance with the .net Agreement and the right to challenge the validity of any award based on the RFP.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kevin C. Golden".

Kevin C. Golden  
Vice President, Associate General Counsel  
VeriSign, Inc.

---

<sup>2</sup> VeriSign referenced some of these concerns in its letters and comments to ICANN dated November 24, 2004; August 25, 2004; June 24, 2004; June 18, 2004; and May 13, 2004.