

Staff Report of Public Comment Proceeding

Proposed .biz Renewal Registry Agreement			
Publication Date:	3 June 2019		
Prepared By:	Russ Weinstein		
Public Comment Proceeding		Important Information Links	
Open Date:	3 April 2019		
Close Date:	14 May 2019		
Staff Report Due Date:	29 May 2019 3 June 2019 (extended)		
Staff Contact:	Russ Weinstein	Email:	globalsupport@icann.org
Section I: General Overview and Next Steps			
General Overview			
<p>ICANN organization posted for public comment the proposed agreement for the renewal of the .biz Registry Agreement, which expires on 30 June 2019. The proposed .biz Registry Agreement is the result of discussion and agreement between ICANN and Registry Services, LLC – the Registry Operator for the .biz top-level domain (TLD).</p> <p>The proposed .biz Registry Agreement is based on the current .biz Registry Agreement and incorporates various terms of the approved Base gTLD Registry Agreement modified for a legacy TLD. The proposed changes to the .biz Registry Agreement are similar to those made in several recently renewed “legacy” gTLD agreements, namely .cat, .jobs, .mobi, .pro, .tel and .travel.</p> <p>ICANN org posted the proposed renewal of the .biz Registry Agreement for public comment from 3 April 2019 through 14 May 2019. ICANN org received over 370 submissions during the public comment period.</p>			
Next Steps			
<p>ICANN org will consider the public comments received and, in consultation with the ICANN Board of Directors, make a decision regarding the proposed registry agreement.</p>			

Section II: Contributors

At the time this report was prepared, over three-hundred and seventy (370) community submissions had been posted to the forum. Due to the large number of comments received, not all contributors are identified by name in this report. Contributors consisted of small businesses, individual registrants, and various community stakeholders and groups. Below is a sampling of organizations and groups that submitted comments, as well as a list of individual contributors whose submissions are quoted in this report. A complete list of contributors and comments can be found at the [View Comments Submitted](#) link. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor by their initials as indicated in the below tables.

Organizations and Groups:

Name	Submitted by	Initials
Internet Commerce Association	Zak Muscovitch	ICA
ICANN Business Constituency	Steve DelBianco	BC
Intellectual Property Constituency	Brian Scarpelli	IPC
Internet Domain Owners Association	Matt Hooker	IDOA
International Trademark Association	Lori Schulman	INTA
Registrar Stakeholder Group	Zoe Bonython	RrSG
Tucows Inc.	Graeme Bunton	TC
ICANN At-Large Advisory Committee	Submitted by ICANN Policy Staff in support of the At-Large Community	ALAC
WHOIS PRIVACY	HOSTMASTER WEB	WP

Quoted Individuals:

Name	Affiliation (if provided)	Initials
Christian K. Nordtømme	PAPAYA design & marketing	CKN
David Jonker	NA	DJ
Matthew Klein	Submitted under the name "pub 144"	MK
Kevin Ohashi	NA	KO
Jen Lampton	NA	JL
Darius, Marius and Tomas Davainis	Submitted under the name "D. D."	DD
Martin Houlden	NA	MH
George Kirikos	Leap of Faith Financial Services Inc.	GK
Steven Sun	NA	SS

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer 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 in the "Important Information Links" section (View Comments Submitted). Comments received after the closing date of 29 April 2019 may not have been included in the summary and analysis of this report.

ICANN org received over 370 comments concerning the proposed renewal of the .biz Registry Agreement. ICANN org appreciates the considerable amount of participation in this proceeding and is grateful to those who provided their feedback and suggestions.

Given the amount of feedback received, it is not practical to capture every comment or theme of agreement, opposition or new ideas. As such, this public comment summary and analysis only identifies areas with a substantial number of similar comments and excludes comments unrelated to the proposed renewal.

A complete list of the public comments received can be found via the [View Comments Submitted](#) link.

Comments submitted generally relate to the following themes: (i) removal of the price cap provision, (ii) inclusion of Rights Protection Mechanisms (RPMs), and (iii) the registry agreement renewal process.

The Removal of the Price Cap Provision

A primary concern voiced in the comments was with respect to the proposed removal of the price cap provisions. This provision in the current .biz registry agreement limits the wholesale price of domain name registrations and the allowable price increases for domain name registrations by the registry operator to the registrars. Commenters with this concern largely consisted of individual registrants, individuals writing on behalf of small and self-owned businesses(s) and organizations who serve the interest of registrants.

Commenters provided a variety of reasons for concern about the price cap provision removal. Many commenters indicated the existing pricing protections should remain in part because they believed legacy TLDs are unique and should be treated differently than new gTLDs. They expressed that legacy TLDs, such as .biz, are viewed as a public trust and should be protected and managed as such.

“It is important not to change the meaning and expectations surrounding legacy Top Level Domains. Their historical availability and affordability are integral to the democratic spirit of the Internet, and they carry a certain meaning. A promise, so to speak. Other TLDs are not as attractive and do not carry the same democratic promise.” – CKN

Furthermore, commenters indicated that with legacy gTLDs, organizations and individuals who have historically registered domain names did so under the assumption that prices would not suddenly increase. There was also a concern that without price controls, prices to renew domain names could become prohibitively expensive, raising the barrier to entry for individuals and small entities and leading to a negative impact on the .biz TLD registrants. Commenters also brought up the burden and costs associated with moving their web presence to another TLD, which could potentially be capitalized on by the registry operator with higher renewal prices without a price cap.

“We do not support lifting existing price caps on annual registration fees for consumers, given the history of these legacy top-level domains and the reasonable pricing expectations of the millions of customers who register and renew domains in these TLDs. While individual domains are typically inexpensive, the costs of switching

between them for an organization can be exceptionally high. Moving from one TLD to another might require notifying clients, reprinting materials, updating databases, and reconfiguring services. Consequently as consumers are locked in, there either needs to be competition at the registry level, or some form of price constraint.” – TC

Additionally, commenters expressed their perception that the .biz TLD’s registry operator is inherently positioned as a monopoly, and because of this environment, consumers require regulatory pricing protections.

“Legally binding price controls are needed when granting monopoly control over the .biz market. Existing .biz owners cannot simply opt to move their domains to a different TLD without irreparable harm to their small business. They will have no choice but to pay whatever is demanded of them, however unreasonable or unfair.” – DJ

“Removing the price cap on legacy gTLDs is an act of regulatory capture, plain and simple. These are non-competitive, monopoly contracts providing internet services with diminishing costs at scale and for years ICANN has allowed them to raise their prices on consumers. The fixed increases were bad enough, but uncapping it and saying the market will decide is dangerous and irresponsible.” – KO

Commenters also conveyed their concern that ICANN org is only acting in the interest of contracted parties by removing the price cap provision. Some suggested that ICANN org may also be benefitting financially from the removal of the price cap provision.

“Nothing justifies the transfer of money from hard-working registrants to fatcat registries who simply provide a basic service that costs a minimal amount of money to provide. Please do not pump literally billions of dollars into these companies bank accounts. Registrants will suffer. The registries have a strong financial position and are solidly profitable as is... Consumers around the world are watching these developments with fear as ICANN seems prepared to do whatever the registries want them to do, at the expense of registrants, who are just average people... Consumers around the world need ICANN to look out for their interests too, not just the dot biz, dot org, dot com registries and others financial powerhouses.” – MK

“Everyone knows that ICANN is adopting malicious practices against society and dangerous behavior with the sole purpose of generating huge profits for the board and its employees. Removing the price cap on heirloom gTLDs or gTLDs created in the 2000s is a way for ICANN to be able to earn more and satisfy the egos of its directors and employees.” – WP

Commenters also expressed concerns about how the removal of the price cap provision would potentially impact international registrants and communities from developing and underdeveloped regions.

“I’m a firm believer in a fair and open internet, and by increasing the cost of domain names many poorer people, or people from poorer parts of the world, will be excluded from participating in the web. The internet should not be another place where only the Rich are allowed. I would hate to see our society loose [sic?] its last place level playing field.” – JL

“I oppose the fact that ICANN wants to remove price caps for .biz domains. Because price increases decrease the possibility of buying domains for those who live in poor countries, for example. Your action stops both the domain and the Internet industry as a whole. Such actions are discriminatory and inadequate.” – DD

Comments in favor of the removal of the price cap provision in the .biz Registry Agreement cited the belief that removing price restrictions would lead to a reduction in domain name squatting. They also indicated that ICANN org is not and should not be a price regulator.

“Given the BC’s established position that ICANN should not be a price regulator, and considering that ORG, INFO and BIZ are adopting RPMs and other registrant provisions we favor, the BC supports broader implementation of the Base Registry Agreement, including the removal of price controls.” – BC

““I think this is a good idea. Something needs to be done to stop Domain name squatters sitting on good names for years and demanding outrageous sums for their release and sale. Vastly increasing the prices of domains would go a long way to stopping this practice.” – MH

The Inclusion of Rights Protection Mechanisms (RPMs) in legacy gTLDs

Commenters including registrants and organizations who advocate on behalf of registrants expressed concern over the addition of RPMs, including Uniform Rapid Suspension (URS), into legacy gTLD registry agreements on various grounds. Those who were opposed to including the RPMs pointed out that RPMs are not consensus policy for legacy gTLDs, and they believed that incorporating RPMs into legacy gTLD registry agreements should be halted until the RPM working group completes its review of the RPMs and comes to its final recommendations. These commenters also expressed the concern that ICANN org is setting substantive policy for gTLDs by adopting elements of the Base gTLD Registry Agreement into amended and renewed registry agreements for legacy gTLDs.

“ICANN prides itself on bottom-up multi-stakeholder policy development, but yet again, ICANN staff has attempted to circumvent the established policy development process. The Proposed .biz Renewal Agreement includes Uniform Rapid Suspension (“URS”) when ICANN Staff are well aware that the question of whether URS should become a Consensus Policy is currently undergoing extensive review by the Rights Protection Mechanism Working Group (the “RPM WG”). In fact, the question of whether URS should be applicable to all gTLD’s as a Consensus Policy is one of the primary questions that numerous experts from the ICANN community have been engaged in for the last two years. – ICA

“Given that the RPM PDP of the GNSO is actively reviewing the URS, including determining whether or not it should be a consensus policy, no steps should be taken by ICANN staff and/or the registry operators to unilaterally impose it upon registrants” – GK

Commenters in favor of the adoption of enhanced rights protection mechanisms in the .biz Registry Agreement renewal proposal were encouraged that Registry Services, LLC elected to include the provisions.

“The IPC applauds Neustar and other Registry Operators that choose to implement enhanced rights protection mechanisms for third party trademark owners, and to take on enhanced responsibilities for the Registry Operator to prevent use of registrations for abusive purposes, including but not limited to violations of intellectual property rights.” – IPC

The Registry Agreement Renewal Process

Another concern raised by commenters was the process ICANN org has followed to renew legacy registry agreements. Specifically, commenters suggested that a competitive registry operator bidding process should be instated in place of presumptive renewal of the agreement.

“ICANN should actively seeking new providers who can lower the cost of the .biz domain names and award the agreement to a winning bidder, for the public's benefit. An open, fair and competitive process should be taken to procure the .biz domain name operator before renewing any agreement.” – SS

Section IV: Analysis of Comments

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

As the .biz Registry Agreement neared its expiration, ICANN org followed the established practice of offering the Registry Operator the option of migrating to the Base gTLD Registry Agreement for the legacy gTLD. Recent legacy gTLD agreements renewed according to the Base gTLD Registry Agreement include .cat, .jobs, .mobi, .pro, .tel and .travel. ICANN org migrates legacy TLDs to the Base gTLD Registry Agreement as it provides additional safeguards and security and stability requirements which are more robust than what exists in legacy agreements. Additionally, the Base gTLD Registry Agreement lays the framework for consistency for registries, registrars and registrants, and provides for operational efficiencies for ICANN org.

The Removal of the Price Cap Provision

The Base gTLD Registry Agreement does not include price cap provisions which are in the current .biz agreement. The price controls for .biz have been in place since the inception of its ICANN org contract, when the domain name market consisted only of a handful of top-level domains. There are now over 1200 generic top-level domains available, and all but a few adhere to a standard contract that does not contain price regulation. Removing the price cap provisions in the .biz Registry Agreement is consistent with the Core Values of ICANN org as

enumerated in the Bylaws approved by the ICANN community. These values guide ICANN org to introduce and promote competition in the registration of domain names and, where feasible and appropriate, depend upon market mechanisms to promote and sustain a competitive environment in the DNS market.

Aligning with the Base gTLD Registry Agreement would also afford protections to existing registrants. The registry operator must provide six months' notice to registrars for price changes and enable registrants to renew for up to 10 years prior to the change taking effect, thus enabling a registrant to lock in current prices for up to 10 years in advance of a pricing change. Enacting this change will not only allow the .biz renewal agreement to conform to the Base gTLD Registry Agreement, but also takes into consideration the maturation of the domain name market and the goal of treating the Registry Operator equitably with registry operators of new gTLDs and other legacy gTLDs utilizing the Base gTLD Registry Agreement.

ICANN org will consider feedback from the community on this issue.

Registry Fees

ICANN org would also like to clarify a few points raised in the comment forum. The registry fees paid to ICANN org are not directly tied to the domain name registration price. The proposed registry fees include a fixed amount of US\$6,250.00 per calendar quarter and a fixed transaction fee of US\$0.25 multiplied by the number of annual increments of an initial or renewal domain name registration without regard to the specific pricing of .biz domain name registrations.

The Inclusion of Rights Protection Mechanisms (RPMs) in legacy gTLDs

In the case of the proposed renewal of the .biz Registry Agreement, as well as other legacy gTLD registry agreement renewals (namely, cat, .jobs, .mobi, .pro, .tel, and .travel) inclusion of the URS was agreed to via bilateral negotiations between the applicable Registry Operator and ICANN org. ICANN org has not moved to make the URS mandatory for any legacy gTLD. Additionally, there is nothing restricting registry operators from imposing additional RPMs in other ways.

The Registry Agreement Renewal Process

In the registry agreement renewal process, negotiations are initiated between the two contracted parties. ICANN org and the registry operator engage in renewal discussions, where both parties consider whether to renew the agreement in its current form or transition all or part of it to the Base gTLD Registry Agreement. Once the parties are in alignment on the form of agreement, a draft renewal agreement is produced by ICANN org for the review and comment of the registry operator. After both parties agree on the terms of the proposed renewal registry agreement, ICANN org invites the community to comment on the agreement, through the public comment process, in order to collect valuable community input before proceeding. The proposed renewal of the .biz Registry Agreement is a result of this established process. The Base gTLD Registry Agreement, which the proposed .biz Registry Agreement renewal is proposed to align with, was developed with substantial community input via the open and transparent multi-stakeholder approach.

Next Steps

ICANN org will consider the public comments received and, in consultation with the ICANN Board of Directors, make a decision regarding the proposed registry agreement.