

Report of Public Comments

Title:	Proposed Renewal of .BIZ gTLD Registry Agreement											
Publication Date:	13 August 2013											
Prepared By:	Karla Valente											
Comment & Reply Periods:		Important Information Links										
Open Date:	3 June 2013		Announcement									
Close Date:	15 July 2013		Public Comment Box									
Time (UTC):	23:59		View Comments Submitted									
Staff Contact:	Cyrus Namazi	Email:	cyrus.namazi@icann.org									
Section I: General Overview and Next Steps												
<p>Following the closure of the public comment period and the publication of this report of public comments, the next step will be for the ICANN Board to consider the proposal and the related public comment at the next available meeting.</p>												
Section II: Contributors												
<p><i>At the time this report was prepared, a total of three (3) 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>												
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 45%;">Name</th> <th style="width: 35%;">Submitted by</th> <th style="width: 20%;">Initials</th> </tr> </thead> <tbody> <tr> <td>Verisign, Inc. (Verisign)</td> <td>Keith Drazek, Director of Policy</td> <td>KD</td> </tr> <tr> <td>Intellectual Property Constituency (IPC)</td> <td>Claudio DiGangi, Secretary</td> <td>CD</td> </tr> </tbody> </table>				Name	Submitted by	Initials	Verisign, Inc. (Verisign)	Keith Drazek, Director of Policy	KD	Intellectual Property Constituency (IPC)	Claudio DiGangi, Secretary	CD
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Section III: Summary of Comments												
<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>												
GENERAL COMMENTS												

.BIZ has not been promoted as it should have been. By now it should have been the second most-used domain after .COM. Most of the public does not even know it exists. An agreement should be signed with an organization willing and able to promote it until it becomes as ubiquitous as .COM. *M. Santiago (6 June 2013)*

SPECIFIC COMMENTS

Whois Requirements (Section 3.1 (c)(v))

In terms of Section 3.1(c)(v), IPC applauds the recognition that ICANN's Internic web page could serve as a portal for cross-registry Whois access, as recommended by the Whois Policy Review Team, and that therefore Whois data from .BIZ should be supplied in a compatible format. This obligation should not be limited to apply only to the Internic interface "as it exists as of the effective date of the agreement," but also as it may be modified from time to time. *IPC (15 July 2013)*

IPC also supports the new requirement for .BIZ to provide links to the forthcoming ICANN page "containing Whois policy and education materials." This provision should be expanded to cover links to any cross-registry registration data service operated by or on behalf of ICANN (such as the Internic service called for by the Whois Policy Review Team, or the common interface for global Whois search that is being created pursuant to the Board's November 2012 Whois resolutions). *IPC (15 July 2013)*

Renewal (Section 4.2)

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 and 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 Neustar 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 Neustar 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)

ICANN should be commended for efforts to expand the benefits of the 2013 RAA as broadly as

possible. In fact, Section 7.1(a) should be strengthened by deleting the last sentence of Section 7.1(a)(viii), which without justification makes the .BIZ obligation to require 2013 RAA adherence conditional on Verisign (com/net) and PIR (org) making similar requests. At a minimum the sentence should be revised so that the obligation becomes operable as soon as the same 2/3 threshold is reached in all 4 gTLDs, whether or not this has triggered a registry request for this revision. Otherwise, as currently drafted the .BIZ agreement will permit registry operators such as Verisign to indefinitely delay the transition, and no other major legacy gTLD will be required to impose the 2013 RAA requirement until Verisign decides to do so. *IPC (15 July 2013)*

Uniform Rapid Suspension (URS)

ICANN should amend the .BIZ contract to provide for a timely and reasonable transition to the applicable consumer protection mechanism--the URS system--that will be required for all new gTLDs.

- The .BIZ renewal should incorporate a commitment to adopt the URS if, after a review of its functioning in the new gTLDs, the URS appears to be reasonably effective in achieving its objectives.
- It is worth noting that the draft agreement (1) provides for automatic renewal at the expiration of term (2019), without changes other than those reflected in the five other largest gTLD agreements (section 4.2); and (2) lacks the so-called “unilateral amendment” process (even though the final version of that process is a shadow of its former self) that is in the new gTLD registry agreement. As a result, it may be impossible to incorporate improvements in the .BIZ registry agreement, no matter how important they may be, other than through the extremely time-consuming process of enacting new Consensus Policies. This is inappropriate in the case of URS, which was adopted after extensive community input and debate, and which will be subject to a thorough review during which time the community will have an opportunity to provide further input.

IPC (15 July 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 .BIZ, 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 .BIZ 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 .BIZ 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 .BIZ 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.

Rights Protection Mechanisms

The .BIZ renewal proposal does not include a requirement to comply with the Uniform Rapid Suspension (URS) rights protection mechanism (RPMs). This RPM has so far only been approved in the context of new gTLDs. The URS is new and requires a "ramp-up" period before it is able to absorb the full workload of the entire gTLD namespace. Additionally, registrants have procured domain names in existing gTLDs with an understanding of the landscape of existing RPMs. New RPMs affect registrants, as well as registries and registrars. They should be introduced in existing gTLDs after a bottom-up community discussion.