

Staff Report of Public Comment Proceeding

Proposed Amendment 3 to the .COM Registry Agreement

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Public Comment Proceeding	
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Important Information Links	
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Section I: General Overview and Next Steps

This public comment proceeding was to obtain community input on the proposed amendment No. 3 to the .COM Registry Agreement (Amendment 3), and accompanying framework for ICANN org and VeriSign, Inc. (Verisign) to work together on additional initiatives related to enhancing the security, stability, and resiliency of the Domain Name System (DNS). This framework is set forth in a proposed binding Letter of Intent (LOI) between ICANN and Verisign.

ICANN org posted for public comment the proposed [Amendment 3](#) to the .COM Registry Agreement and the proposed [binding LOI](#) between Verisign and ICANN org from 3 January 2020 through 14 February 2020. ICANN org received 9,043 submissions during the public comment period.

ICANN org appreciates the considerable amount of participation in this proceeding and is grateful to those who provided their feedback.

Next Steps

ICANN org has shared this report with the ICANN Board for their consideration. The President and CEO of ICANN org, in consultation with the ICANN Board of Directors, will make a decision regarding the proposed Amendment 3 and proposed binding LOI between ICANN org and Verisign.

Section II: Contributors

At the time this report was prepared, a total of 9,043 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 individual registrants, organizations, 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 using the View Comments button at the top of the [page](#). To the extent that

quotations are used in the following 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
GNSO Intellectual Property Constituency (IPC)	Brian Scarpelli	IPC
Business Constituency (BC)	Steve DelBianco	BC
Registrars Stakeholder Group (RrSG)	Graeme Bunton	RrSG
GoDaddy	Ashley Heineman	GD
Namecheap	Owen Smigelski	NC
TurnCommerce	Jeffrey Reberry	TC
MarkMonitor	Brian J. King	MM
American Enterprise Institute	Roslyn Layton, Ph.D.	AEI
International Trademark Association (INTA)	Lori Schulman	INTA
At-Large Advisory Committee (ALAC)	Maureen Hilyard	ALAC
Internet Commerce Association (ICA)	Zak A. Muscovitch	ICA
Afnic Registry Operator	Pierre Bonis	AFNIC

Individuals:

Name	Affiliation (if provided)	Initials
Bob Mountain	NA	BM
Arif Hyder Ali	Dechert, LLP	AHA
George Kirikos	Leap of Faith Financial Services, Inc.	GK
John Riccio	NA	JR
C. Brunson	NA	CB
Mia Dobson	NA	MD
Alejandro Guzman	NA	AG
Timothy Allen	NA	TA
Johnneylee Jack Rollins	NA	JJR
Jack Yan	NA	JY
Alex Arko	NA	AA
Don Smith	NA	DS
Philip O Martel	NA	PM
Daniel Roberts	NA	DR
Chad von Nau	NA	CvN
Volker Greimann	NA	VG
Ted Hens	NA	TH
John Kiedaisch	NA	JK
Rik Sebastian	NA	RS
Sara Dyson	NA	SD
Nicola Tyler Private	NA	NTP

Section III: Summary of Comments and Analysis of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding along with the analysis and evaluation of the comments 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 (View Comments). Further, comments noted in quotation marks are provided in their original format. Comments received after 14 February 2020 may not have been included in the summary and analysis report.

ICANN org received over 9,000 comments concerning the proposed Amendment 3 to the .COM RA and proposed LOI. ICANN org appreciates the considerable amount of participation in this proceeding and is grateful to those who provided their feedback. All 9,043 comments received by 14 February 2020 were reviewed individually and considered prior to compiling this summary and analysis.

After review of the comments, ICANN org has organized this summary and analysis of the comments report in accordance with the five primary objectives of the proposed Amendment 3 and the proposed binding LOI as explained in the public comment [announcement](#). ICANN observed one additional theme of comments that did not fit these objectives, relating to the process by which ICANN negotiates contract renewals and amendments with contracted parties, which is discussed following the 5 objectives.

This public comment summary and analysis report includes a summary of the comments by each of the primary objectives with the analysis of the comments provided immediately following the summary.

As a reminder, the proposed [Amendment 3](#), together with the proposed [binding LOI](#), accomplish five primary objectives:

1. Alignment of certain terms of the .COM RA with Amendment 35 to the Cooperative Agreement.
2. Formalization of a framework by which ICANN and Verisign will work together to support additional enhancements to security and stability of the DNS, including to help combat DNS security threats.
3. Additional funding from Verisign to ICANN org to support ICANN org's core mission to ensure the stable and secure operation of the Internet's unique identifier systems.
4. Alignment of certain technical and reporting obligations for the .COM TLD with those in the Base gTLD Registry Agreement (Base RA).
5. Incorporation of commitments related to the implementation of the Registration Data Access Protocol (RDAP).

Objective 1: Alignment of certain terms of the .COM RA with Amendment 35 to the Cooperative Agreement, including the changes to the maximum wholesale price for .COM registry services.

COMMENTS SUMMARY:

As anticipated, the proposed increase to the maximum allowable wholesale price for .COM registry services generated significant community attention, and comments related to this aspect of the proposed agreement make up 95% of the 9,043 comments received. Of those who self-identified, comments received about this topic were received from .COM registrants, domain investors, or domain name registrars. The comments about the proposed changes to the maximum allowable wholesale price for .COM registry services were nearly unanimous in voicing disagreement or concern though they provided a variety of reasons why they are against the change.

One of the reasons for the high volume of comments is that several organizations involved in the speculation sector of domain name industry mobilized their members and customers to submit comments to ICANN. The Internet Commerce Association (ICA), a group that represents domain investors, was particularly active in expressing its dissatisfaction with the proposed increase to the maximum wholesale price for .COM registry services, and mobilized its members to submit comments to ICANN org – including creating and promoting a tool to generate templated comment submissions forms available on its website, as well as using blogs and opinion pieces in various industry sites. Similarly, registrars such as Namecheap, Namebright (TurnCommerce) and Dynadot also encouraged their registrants to submit comments to ICANN org with form-letter generators and templates. These campaigns successfully achieved a high volume of comments and ICANN org reviewed and considered each of the comments received.

Registrants represented over 1,000 comments using the templated language or a variation of the template provided:

*“I am a registrant of a .com domain name.
I am against the proposed price increase to .COM domains.
The current rate of \$7.85 is already far more than justified.
ICANN is supposed to govern the domain name system in the public interest.” -JJR*

*“I am a registrant of a .SE domain name, but appreciate that much of my business relies on the .COM registry, which by far leads the market in domain name registries
I am against the proposed increase of price to .COM domains - only Verisign wants this increase, and being merely a manager of the .COM registry has no business dictating price. Given the vast volume of registrations the current rate of \$7.85 is already far more than justified.
ICANN is supposed to govern the domain name system in the public interest, not that of corporations.” -MD*

Nearly 200 domain investors/speculators also known as “domainers” used the templated language to express their concerns:

"I am a domainer (I invest in domain names as a business) or am associated with the secondary market.

I am against the proposed price increase to .COM domains.

No one other than Verisign want increases in .COM prices.

The current rate of \$7.85 is already far more than justified.

Verisign is merely your manager of the .COM Registry – it has no business dictating the price.

ICANN is supposed to govern the domain name system in the public interest." -TH

"If anything, price increases should be limited to no more than 1%-2%. Such an exorbitant increase as proposed would completely destroy my business which is already based on slim margins.

I am a domainer (I invest in domain names as a business).

I am against the proposed price increase to .COM domains.

No one other than Verisign want increases in .COM prices.

The current rate of \$7.85 is already far more than justified.

Verisign is merely your manager of the .COM Registry – it has no business dictating the price.

ICANN is supposed to govern the domain name system in the public interest." -JK

Other commenters provided their perspective on the potential negative impact to small businesses, individual registrants, or those in developing regions without using the template language:

"An increase every year will negatively impact the profit margin of small businesses. The expenses of small businesses will get out of hand as paying for registration costs in addition to ongoing web development and maintenance costs along with other business costs skyrocket in time." –CB

"While price hikes such as this likely won't mean much to the larger business concerns that buy in bulk, it will impact the millions of small, independent businesses and developers that rely on the system as is to make their livelihood. At worst, this could prove yet another point of pressure that convinces a small business to make their online presence exclusively in the Facebook walled garden and eschew the web itself." –JR

"The internet was, when it was founded, a democratic medium, one where a small business with a great idea could shine as much as a big business could. Look at the companies that rose in that early era, such as Google. Companies that started with low cost, including securing a dot-com domain name. The internet of the '90s was for the many, not the few, and this great equalizing effect produced innovation. Small- to medium-sized businesses no longer needed massive budgets to reach potential audiences. Raising domain name prices, especially in the dot-com space, therefore, stifles the economy in numerous ways. In my opinion, the negatives outweigh the positives, and I urge you to keep the dot-com TLD accessible to all individuals." -JY

"Hiking prices for domain names makes them unaffordable for poor or third world registrants, increasing the divide between haves and have-nots. DNS is a system that relies on everyone using a single, authoritative source. Increasing prices could act to split the internet based on location or income level." –TA

"We're a small island developing state in the Latin America/Caribbean region. Our ability to register domain names is already affected by the unfavorable exchange rate to USD. A glance at the rates at which people register new domains for our region will surely reflect that it's already less likely for our businesses to create their own .COM websites. I believe that increasing the price of registration of new addresses will have a disproportionate negative impact on the stakeholders and potential stakeholders in our region." –AG

Other commenters suggested there was a lack of transparency and accountability regarding the proposed price increase:

"I feel that this amendment is wholly unfair to the end customer. Apparently negotiated and agreed to in the middle of the night, with zero input from the customer side of the argument, will make me support ANY regulation of this field. Additionally, if any politician calls out this unfair price increase they will have my vote, no matter which party they come from. Please reconsider this amendment and involve all concerned, in the open, and with full transparency!" -AA

"The behind closed doors decisions made by ICANN in relation to Verisign threatens to impose profit-driven transactional costs that will increase the costs of domain holders and with no benefit to the public. These moves clearly appear to have been done strictly to enhance the bottom line of controlling organizations without consulting those these actions effect most, the individuals and businesses of all sizes that hold domain registrations. I oppose these changes and request greater transparency with the public in the future." -RS

"If prices of domains are going to increase, I ask for full transparency of why the cost would be increased. Those of us whom own domains should understand exactly what is going on. At the end of the day, domains are arbitrary addresses with little overhead to manage so increasing their cost drastically seems unnecessary and driven only by greed. To prove I'm wrong, please be transparent in all changes made." -SD

Some commenters suggest the management of .COM should be put out for public bid to encourage more competitive pricing.

"Allow the extension to be put out to bid to protect the consumer and the free market will do its job, working on behalf of the consumer, providing increased value for money over time." –BM

"Every time a registry operator has faced competition for a registry contract, lower prices have resulted...Multiple registry operators have publicly stated they could perform the same level of service as Verisign in operating the .com registry at a fraction of the price: Tucows, for example, has stated it could manage the registry for less than \$3 per registration." -TC

Several commenters referred to Verisign's latest quarterly earnings and request a justification for the changes to the price constraints:

“With 69.6% non-GAAP operating margins and 65.5% GAAP operating margin in 2019 - Verisign's financials are remarkable. Why is any rate hike justified? Verisign is realizing the benefits of economies of scale on a growing base of domain names. On top of a perpetual contract to operate the .com registry -- which excludes all forms of competition at the registry level.” –DS

Other commenters suggested market analysis or economic study should be done:

“ICANN has previously conducted marketplace studies, and it is imperative that such a substantial change to the DNS should only proceed after the completion of an independent and unbiased market analysis based upon evidence and community feedback.” -NC

“Before ICANN agrees to price increases for .COM, GoDaddy asks ICANN to conduct an independent economic study of the domain name market and the effectiveness of competition on legacy gTLD pricing levels. The study should be conducted and considered prior to the first increased pricing year.” –GD

“While one might reasonably expect the retail (registrar) prices that consumers pay to align closely with wholesale (registry) fees, that is less and less the case. Take the example of the largest and most profitable domain name registrar, GoDaddy. Its retail prices for .com domains have steadily climbed throughout the 8-year period during which wholesale prices have remained flat (the wholesale cost of a .com domain name has been capped at \$7.85 since 2012) ... According to public sources, GoDaddy – which currently has more than 52 million .com domain names under management – charges \$17.99 per year for each .com renewal to its retail customers. This reflects a more than 20 percent increase over the 2018 price of \$14.99... It’s very difficult to estimate the extent of the impact that domainers have on the normal functioning of the domain name marketplace, or how much that activity affects ordinary consumers since no real effort has been made to study it... There is not enough empirical information available to the community about domain name pricing. ICANN is in a unique position to remedy this problem by conducting or commissioning a thorough study of TLD pricing that considers all factors discussed above [retail pricing and domainer activity]. -AEI

ICANN received mixed comments regarding ICANN’s role in price regulation:

“ICANN is Under No Legal Obligation to Permit Verisign to Raise its Prices to the Maximum or At All... ICANN never committed to raising the Maximum Price that Verisign was permitted to charge for .com registrations... NTIA did not require or impose a 7% increase in price and that it remains up to ICANN whether to agree to give Verisign any increase at all, or if an increase is to be granted, whether it should be within the maximum of 7% instead of at the maximum... ICANN as the steward of the .COM Registry, is of course entitled to determine what its service provider, Verisign, can charge in respect of a public resource that ICANN is supposed to manage in the public interest.” –ICA

“Although we do not support ICANN regulating prices and prefer a genuinely competitive market, the BC was “comfortable” accepting that price controls were willingly negotiated and agreed to by Verisign and ICANN. And in the case of .COM, Verisign’s national regulatory body has set the terms of price regulation.” -BC

Also about 20 commenters provided neutral or positive aspects about the proposed changes to the pricing provisions:

“regarding price increases, while it might initially appear counterintuitive for a registrar and its registrants to embrace higher pricing, many of our clients appreciate the deterrent value of higher-priced domain names to would-be bad actors.” -MM

“I own a number of domains myself yet believe current domain prices support mass squatting practices. Any increase in domain prices will support a healthier domain ecosystem for the future. Thank you for beginning this process by allowing for price increases.” -DR

“If the maximum increases were applied, the average annual increase over the 6-year period would be about 4.5% per year. The BC has no practical objection to price increases that average just 4.5% per year for businesses who register .COM domains.” -BC

Registrars also commented on the changes in Amendment 3 regarding Verisign’s prohibition from owning or controlling a registrar of .com domain names.

“Verisign would be able to leverage its significant market share in .COM to be a registrar for all other TLDs- and nothing in the amendment prevents Verisign from reselling .COM domains via another registrar. In theory, Verisign could resell .COM domain names at or below cost and still profit from the wholesale .COM price.” -RrSG

ANALYSIS OF COMMENTS:

The changes in the proposed Amendment 3 which align certain terms of the .COM Registry Agreement with Amendment 35 of the Cooperative Agreement, and specifically the changes to the maximum allowable wholesale price of .COM registry services generated the overwhelming majority, 95%, of the 9,043 comments.

As set out in the [announcement](#) of the Proposed Amendment 3, one of the objectives of this amendment is the “Alignment of certain terms of the .COM RA with Amendment 35 to the Cooperative Agreement, including the .COM maximum pricing provision for registry services”. This objective stems from the [2016 Amendment 1](#) to the .COM RA. Under Amendment 1, the parties agreed to cooperate and negotiate in good faith to amend the .COM Registry Agreement (RA) as necessary to reflect changes made to Verisign's Cooperative Agreement with the U.S. Department of Commerce (DOC), and to amend the terms to preserve and enhance the security and stability of the Internet for the .COM TLD. This change to the maximum wholesale price provision in the proposed Amendment 3 was widely expected by the domain name industry as far back as November 2018 when Amendment 35 to the Cooperative Agreement was announced. However, roughly 50% of the comments received relating to the changes to the maximum allowable wholesale price provision suggested ICANN did not leverage the multistakeholder model or there was a lack of transparency within the process for how the amendment was negotiated even though many industry blogs and news articles anticipated these changes for .COM domain names, for example see: [The Register](#), [Domain Name Wire](#), and [Forbes](#).

While some commenters requested market analysis or economic study prior to ICANN taking action on the proposed amendment, ICANN org is not a competition authority or price regulator and ICANN has neither the remit nor expertise to serve as one. Rather, as enshrined in ICANN's Bylaws, which were developed through a bottom up, multistakeholder process, ICANN's mission is to ensure the security and stability of the Internet's unique identifier systems. Accordingly, ICANN must defer to relevant competition authorities and/or regulators, and let them determine if any conduct or behavior raises anti-competition concerns and, if so, to address such concerns, whether it be through price regulation or otherwise. In its [statement announcing Amendment 35](#) of the Cooperative Agreement, the DOC stated "The amendment repeals Obama-era price controls and provides Verisign the pricing flexibility to change its .com Registry Agreement with ICANN to increase wholesale .com prices." In the [Amendment 35](#) of the Cooperative Agreement, the DOC noted that the domain name marketplace had grown more dynamic and concluded that it was in the public interest that, among other things, Verisign and ICANN may agree to amend the .COM Registry Agreement to permit an increase to the wholesale price for .COM registry services, up to a maximum of seven percent in each of the final four years of each six-year period (the first six-year period commenced on October 26, 2018). The proposed Amendment 3 to the .COM RA reflects this change, essentially restoring the pricing structure from the 2006 .COM Registry Agreement.

Deferring to the DOC and DOJ for wholesale price regulation for .COM is not a new position for ICANN org to take. In November 2006, the .COM Registry Agreement approved by the DOC and the DOJ included price caps up to seven percent in four of six years. No economic study was conducted because ICANN deferred to the judgement of the appropriate competition authorities. Then in 2012, the DOC instructed Verisign to remove the price flexibility from the .COM Registry Agreement, which resulted in the freeze of the maximum wholesale price of US\$7.85 for .COM registry services, as evidenced in [Amendment 32 to the Cooperative Agreement](#). Again, the terms were applied as directed by the DOC and is reflected in the current [.COM Registry Agreement](#).

In addition to the agreement between the DOC and Verisign to modify the wholesale price of .COM registry services, the DOC determined it is appropriate "to remove certain unnecessary and burdensome regulations, such as vertical integration, and only apply the restriction for Verisign to own a registrar to the .COM registry." Applying the same logic as with the price controls, ICANN org is deferring to the relevant regulatory authority, the DOC. The change to the .COM RA applies the clarification provided by the DOC in Amendment 35, which continues to prohibit Verisign from owning or controlling a registrar in the .COM TLD. Further, if Verisign were to choose to participate as a registrar or reseller in new gTLD's, they would be bound by [Section 2.9 of the Base RA](#) which requires any registry operator to abide by certain restrictions and processes for doing so, and these may include referral to the relevant competition authority.

Objective 2: New commitments from Verisign related to mitigating or combating DNS Security Threats.

COMMENTS SUMMARY:

Overall, of those who commented regarding this objective, commenters applaud ICANN and Verisign for taking steps toward mitigating DNS Abuse:

“The IPC strongly supports the proposed incorporation of two PICs into Amendment 3”. Further, “the IPC enthusiastically endorses the new language referencing enforcement (in Spec 11, 3(a)).” -IPC

“INTA strongly supports the inclusion of PICs as part of the proposed Amendment. These PICs are an important step in ensuring that registries and registrars take more meaningful measures to prevent and combat abuses in the domain name system, including, most importantly for INTA and its members, trademark infringement and related activity. Integrating these PICs into the .COM registry agreement is a long-awaited update to put the .COM registry on equal ground with other registries that already adhere to these PICs.” –INTA

“Therefore, it is with happy hearts, that the At-Large Advisory Committee receive the LOI between Verisign and ICANN as a commitment to expand efforts to identify and promulgate best practices by contracted parties to mitigate DNS Abuse. While there are many whose efforts exceed those of others, we in the At-Large Community believe that even more can be done both in terms of best practices and in terms of bringing along those whose practices are not the best.” -ALAC

However, some comments from ICANN's commercial stakeholder group suggest that Amendment 3 and the LOI doesn't go far enough:

“While the IPC appreciates and supports that the proposed Amendment 3 and LOI address the issue of DNS abuse, the IPC believes that the proposed Amendment 3 and LOI must implement stronger steps against DNS abuse. Abusive and illegal activity on the internet is a significant and growing problem, and a very significant percentage of these activities occur through .com domains.” –IPC

“We encourage ICANN and Verisign to take a broader view of ICANN's remit, and we call for them to commit in the LOI to address the IP-related threats, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting... as included in the PICs...while commercial users of the DNS are still actively attempting to begin working with Verisign and other ICANN stakeholders in the coming year on trusted notifier as promised in 2018, MarkMonitor also welcomes Verisign to demonstrate this commitment by joining the registries and registrars who have committed publicly to address certain types of non-technical abuse in the DNS Abuse Framework.” –MM

“The LOI has an initial definition of “phishing, malware distribution, and botnet command and control”. Those threats are indeed significant and match with Spec 11 3(b). Yet those activities include just 3 of the 8 DNS Abuses listed in Spec 11 3(a)... The BC recommends that ICANN and Verisign amend their LOI to add the other DNS Abuses in Spec 11 3(a). If not, we would insist that ICANN Org commit to quickly initiate a public process where the ‘definition may be expanded to include other threats,’ as provided in the LOI”. -BC

There were also concerns that ICANN has granted Verisign too much authority related to DNS Security Threats:

*“...we point out that the new language in section 2.7 is dangerous, potentially allowing Verisign the ability to override decisions by registrars as to how to handle various situations, which can result in elimination of due process for registrants. For example, 2.7(b) refers to: “any legal order or subpoena of ****any government****, administrative or governmental authority, or court of competent jurisdiction,” (emphasis added) which is not acceptable! For example, if this language is not modified, then it says that if a government from Cuba, North Korea, Iran or other totalitarian regime tells Verisign to transfer ownership of sites owned by my company, such as Math.com or FreeSpeech.com to their control, Verisign can go along!” -GK*

“...the commitment by Verisign to work with ICANN and the ICANN community on best practices appears well intentioned principally, but there lacks any detail with respect to how such activity(ies) will be conducted and the requisite expectations of the community. ICANN must inform the community on the details of this transaction and resultant programs prior to sending the LOI to Verisign.” –GD

“...Lol puts Verisign, a respected member of the ICANN community, in a position that is outside the ICANN community. The fact that the Verisign's action is described as being implemented “within ICANN process” doesn't change this strange way of designating Verisign as an organisation not part of the ICANN community. Jointly with ICANN as an organisation, and not from the ICANN community where it belongs, Verisign would then develop best practices that could be applied to ICANN interested parties, not with them, but for them. The worst part being that these best practices developed, not by and within the ICANN community as it is the rule that bind us, but from a third party, could become new contractual obligations.” -AFNIC

ANALYSIS OF COMMENTS:

Overall, comments were primarily positive regarding the inclusion of new commitments from Verisign related to mitigating or combating DNS Security Threats. Of those who commented regarding this objective, ICANN org observed no objection to inclusion of Specification 11 3(a) and 3(b) in the proposed Amendment 3.

While some commenters felt the definition of DNS Security Threats in the LOI could go further to combat phishing and abuse sites, the definitions used in the LOI map to the definitions used in Specification 11 3(b) in the Base RA, with the exclusion of “Pharming” which is a threat that affects domain name resolution services and not registration services and, therefore, the Registry Operator is not typically in a position to mitigate. If the ICANN community develops a new consensus definition for DNS Security Threat or DNS Abuse, ICANN org and Verisign can work together through the framework envisioned in the LOI to adopt the definition.

Regarding the concerns about Verisign’s role, the LOI makes clear that Verisign will work “with the ICANN community to determine the appropriate process for, and development and implementation of, ‘best practices’ related to combating Security Threats.” This is not intended nor anticipated to put Verisign outside or above any others within the ICANN Community.

Objective 3: Additional funding to ICANN org to support ICANN org's core mission to ensure the stable and secure operation of the Internet's unique identifier systems.

COMMENTS SUMMARY:

Over 350 comments were received regarding Verisign's commitment to provide funding to ICANN org to support the security, stability, and resilience of the Internet's unique identifier systems. Some commenters focused on the lack of transparency of how Verisign will provide ICANN org with the funds and requested transparency on how the funds will be used. Others offered suggestions on how to use the funds in addition to what was provided in the LOI while others suggested the funding is circumspect and is a "payoff" from Verisign to ICANN org:

"Before ICANN Org makes decisions about how to spend the SSR funds provided by Verisign, it should follow recommendations of the most recent community SSR Review and seek the advice of the Security and Stability Advisory Committee." -BC

"The RrSG is concerned over insufficient transparency regarding the \$20 million payment from Verisign to ICANN... This payment is stated as being earmarked "to support ICANN's initiatives to preserve and enhance the security, stability, and resiliency of the DNS", however, without community oversight, how will ICANN be able to account for these funds? Without such oversight, this gives the payment a questionable appearance, as well as the risk that the funds would simply be used to support the general operating budget of ICANN. As such, the RrSG requests ICANN community oversight of the use of these extraordinary funds." -RrSG

*"I am sure Verisign can afford to donate the \$20m without anyone being penalized. Price increases and donations are two separate points. The domain name registration and renewal (annuity income) business? Surely it would be prudent to reveal the numbers before telling us about increases? How many domains are registered?
- What's the annual turnover/profit?
- What does the customer get?
- What are the proposed tariff increases?
And, and, and...." -NTP*

"...the At-Large Advisory Committee (is happy) to receive the LOI between Verisign and ICANN as a commitment to expand efforts to identify and promulgate best practices by contracted parties to mitigate DNS Abuse." -ALAC

"I can see that the proposed amendment is in the interest of Verisign: they get an increase in the wholesale price of .COM domains far in excess of the cost of living. I can see that the proposed amendment is the interest of ICANN: they get a payment of \$20 million. I can't see that the proposed amendment is in the interest of the public." – PM

ANALYSIS OF COMMENTS:

Comments were mixed in support of Verisign's commitment to fund ICANN org's initiatives to preserve and enhance the security, stability and resiliency (SSR) of the DNS. Some comments revealed a skepticism from community members that this funding was not a "pay off" in exchange for the changes to the maximum price provisions described above in Objective 1 or a perceived lack of transparency regarding how ICANN will use the funding. While others, including the ALAC, representing the 4 billion internet users, were supportive of ICANN receiving more money for its critical SSR initiatives.

As explained in the analysis of Objective 1, the decision to adjust the pricing controls in alignment with the Cooperative Agreement was purely based on ICANN continuing to defer price regulation decisions to the relevant competition authorities. The \$20M of funding is solely intended to enhance security, stability, and resiliency of the DNS and the funding may be applied to a variety of SSR related projects including root server governance, mitigation of DNS security threats, promotion and/or facilitation of DNSSEC deployment, the mitigation of name collisions, and research into the operation of the DNS. ICANN org appreciates the suggestions provided to support these activities and will take them into consideration as to how to allocate the funding.

ICANN org agrees with and supports the need for accountability and transparency regarding how the funds are used and is committed to full transparency to provide the ICANN community the appropriate level of information as such funds are received and used. ICANN intends that all impacts related to these funds be incorporated into ICANN's annual planning and budgeting process, as well as ICANN's periodic financial reporting. In this process, ICANN org carries out extensive community engagement and consultation throughout the entire planning process, including webinars and meetings with ICANN's Supporting Organizations (SOs), their Stakeholder Groups (SGs) and the Advisory Councils (ACs) as well as formal public comment proceeding on all planning documents, including strategic plan, operating plans and budgets. The [Empowered Community](#) can exercise rejection powers on Board decisions adopting the strategic plan, the five-year operating and financial plan, and the annual plan and budget, providing for a complete measure of accountability.

Objective 4: Alignment of certain technical and reporting obligations for the .COM TLD with those in the Base gTLD Registry Agreement.

COMMENT SUMMARY:

Few comments were made about the proposals to further align the technical and reporting obligations of the .COM RA with those in the Base gTLD Registry Agreement (Base RA). Some raised concerns that certain provisions in Specification 11 from the Base RA were not included in the Appendix 11 Public Interest Commitments of the proposed Amendment 3.

"...in order to instill greater transparency and public accountability to the .com TLD vis-à-vis the newly added PICs, the IPC strongly recommends adding Specification 11, Sections 3 and 3(c) of Specification 11 to the .com Registry Agreement. More specifically... the Public Interest Commitment Dispute Resolution Process (PICDRP) by adopting Section 3 of Specification 11." Finally, "... to safeguard against predatory practices... Verisign should agree to abide by general principles of transparency, openness, and non-discrimination by adopting Section 3(c) of Specification 11." -IPC

“... no specific rationale has been provided for the decision to exclude the Spec 11, Section 2, requirement that registry operators adhere to the Public Interest Commitment Dispute Resolution Procedure (PICDRP). The BC notes the absence of the PICDRP from Proposed Amendment 3, and concludes that the public itself lacks any ability to enforce any .COM Public Interest Commitments included in Spec 11. The ordinary Spec 11, section 3(c), commitment to operate in a “transparent manner consistent with general principles of openness and non-discrimination” is also noticeably absent from the .COM Proposed Amendment 3. In conjunction, the .COM Public Interest Commitments included in Spec 11 appear to lack any real accountability to the public, and would be more aptly labeled as “Security Commitments”. -BC

Also, commenters from the intellectual property community questioned the absence of Uniform Rapid Suspension (URS) as a Rights Protection Mechanism in the proposed Amendment 3 to the .COM RA. While other commenters suggest URS should not be included in this contract, as it has not yet become GNSO consensus policy and believes that the Policy Development Process (PDP) is the best path for the implementation of URS.

“INTA notes that the Proposed Amendment does not include any updates to the RPMs provided by Verisign in connection with its administration of the .COM registry... Many legacy gTLD operators have already voluntarily adopted additional RPMs, notably URS, to complement the UDRP already applicable to all gTLDs. INTA supports (and has long supported) the adoption of such RPMs by all legacy gTLD operators, to enhance the overall availability of such RPMs to brand owners (especially in popular legacy gTLDs, like .COM) as well as ensure that all gTLD registries are operating on an equal playing field in the marketplace.” -INTA

“The BC notes that Amendment 3 does not require .COM to include URS... The BC continues to believe that the PDP is the best path for the implementation of URS, since it works across all gTLDs, instead of depending on individual contract negotiations.” Further, “...the BC supports importing registrant protections from the new gTLD base agreement – including Specification 7, Specification 11, and URS—in any contractual negotiation opportunity that arises for legacy gTLDs.” -BC

ANALYSIS OF COMMENTS:

As one component of satisfying the obligation from Amendment 1 to “cooperate and negotiate in good faith to amend the terms of the Agreement (a) to preserve and enhance the security and stability of the Internet or the TLD” Verisign and ICANN org worked together to ensure certain technical specifications and reporting requirements were included in line with those of the Base RA.

None of the comments received directly tied to technical or reporting obligations, though comments were received regarding the decision to include or not include certain provisions from Specification 11 of the Base RA or of the Uniform Rapid Suspension (URS) Rights Protection Mechanism.

Several commenters identified the entirety of the public interest commitments specification, Specification 11, were not included, with specific requests for the inclusion of the Public

Interest Commitments Dispute Resolution Procedure (PICDRP) from the Base RA. ICANN recognized the on-going community discussions regarding DNS Abuse, and prioritized the inclusion of firm commitments from Verisign regarding mitigating or combating DNS Security Threats, as identified in Objective #2 of the proposed Amendment 3 and LOI. In the proposed agreement this manifested as the inclusion of the commitments in Specification 11 3(a) and 11 3(b) of the Base RA as well as the framework outlined in the LOI. While the PICDRP from the Base RA was not included in Appendix 11 of the proposed Amendment 3, the provisions in Appendix 11 are enforceable by ICANN org's Contractual Compliance function. Any Internet user is able to submit complaints to ICANN Contractual Compliance or ICANN Contractual Compliance may identify an issue through its proactive monitoring. In either case, ICANN Contractual Compliance will work to ensure that Verisign is abiding by its agreement, or appropriately remediates the issue to return to compliance. Further, several provisions in the Specification 11 from the Base RA would not be applicable to the .COM TLD even if included in the contract, such as portions of Section 2 which references commitments from the application for the gTLD, and Specification 11 3(d) which references a generic string, but this reference to generic ties to the [Government Advisory Committee's \(GAC\) 2013 Advice](#) to the ICANN Board regarding new gTLD's being used as "closed generics".

As this is an amendment to the .COM RA and Verisign is not adopting the Base RA, ICANN org's primary focus is on the security, stability, and resiliency as committed to in Amendment 1 to the .COM RA. While URS is not included in the proposed Amendment, ICANN reminds the community that registrations in .COM, just as registrations in all gTLDs, are subject to the Uniform Domain-Name Dispute Resolution Procedure (UDRP), as this is adopted Consensus Policy.

It should be noted that the URS was recommended by the Implementation Recommendation Team (IRT) as a mandatory RPM for all new gTLDs. In the IRT Final Report, the IRT stated that "Therefore, the IRT recommends that ICANN Organization implement the URS, which would be mandatory for all new generic Top Level Domain (gTLDs), implemented through the new gTLD Registry Agreements, which would in turn bind registrars supplying new gTLDs to the marketplace." Although the URS was developed through the process described above, including public review and discussion in the GNSO, it has not been adopted as a consensus policy and ICANN Organization has no ability to make it mandatory for any gTLDs other than those subject to the base new gTLD Registry Agreement. Accordingly, ICANN has not moved to make the URS mandatory for any legacy gTLD.

Objective 5: Incorporation of commitments related to the implementation of the Registration Data Access Protocol (RDAP).

COMMENT SUMMARY:

Less than five comments focused on the inclusion of RDAP in Amendment 3. Commenters were generally supportive of Verisign's commitment to implement RDAP, but there is a perception that Verisign is receiving preferential treatment because Amendment 3 includes the ability for ICANN org and Verisign to open separate negotiations. Commenters suggest Verisign should be required to implement RDAP consistently with the RDAP requirements and timelines of other registries.

“To the extent these terms of the Proposed Amendment afford Verisign preferable treatment vis-à-vis the substantive requirements or timeframe for implementation of RDAP as compared to other registries, INTA strongly opposes such treatment. Verisign should be required to implement RDAP as a replacement to the WHOIS protocol consistently with the RDAP implementation requirements and timeline of other registries. It is not clear why Verisign should not be subject to the same RDAP implementation requirements as other registries (in terms of substance and timeframe), and any preferable treatment affords Verisign an unfair market advantage with respect to these requirements. It may also stymie the full and effective use of RDAP/RDS by legitimate users of RDS, including trademark owners, where RDAP should be used to effectuate RDS access pursuant to a final consensus policy on gTLD domain name registration data.” -INTA

“And I like that work is being put into the RDAP protocol. It is not explicitly stated, but I hope that RDAP can help make domain privacy obsolete and provide some of the same benefit by default.” -CvN

ANALYSIS OF COMMENTS:

As ICANN org only recently entered into negotiations with the gTLD Registries Stakeholder Group (RySG) and the Registrars Stakeholder Group (RrSG) to define the contractual requirements for RDAP comparable to WHOIS and to define the transition of technology for delivering Registration Data Directory Services (RDDS) from the WHOIS protocol to RDAP for the Base RA and 2013 RAA, ICANN org and Verisign agreed to an initial set of requirements for the RDAP service specification based on those discussions with a working group of members from both the RySG and RrSG. As the proposed Amendment 3 is expected to be in place before the contractual requirements for the transition from WHOIS to RDAP service are finalized, it is ICANN org’s intent to work with Verisign in good faith to amend the .COM RA in the future to align the requirements with those resulting from the negotiation between ICANN org and the RySG as it relates to RDDS.

Comments regarding the contract amendment process

COMMENT SUMMARY:

As noted in the comment summary for Objective 1, many of the commenters using the templated language and independently suggest the need for greater community input at earlier stages of the amendment negotiation process. The general sentiment from those who provided comments on the proposed Amendment 3 and the binding LOI is that any closed-door negotiations between ICANN org and Verisign removes all transparency from the process and causes doubt on the motives of the decisions. The comments suggest that the negotiations are not in line with the multistakeholder model and the lack of transparency belies the community-based consensus-driven approach ICANN is based on. The prevailing view is that the community should have the opportunity to voice opinions on proposed changes impacting the registry agreement, especially for .COM, *before* negotiations begin between ICANN org and Verisign.

Further, an overarching concern from commenters is about the lack of a documented process for handling amendments and that the public comment process is nothing more than a “check-the-box” activity for ICANN org. Commenters suggest ICANN org should consider holding a series of public webinars with a Question and Answer session with the public and stakeholders in advance of posting amendments for public comment.

“...the RrSG is concerned that ICANN did not consult with the community prior to the negotiation of this amendment. Significant and substantial changes to a registry agreement that will have long term and far-reaching impact on the Internet should occur only after consultation with the ICANN community. Because ICANN did not do so, it is not clear that ICANN negotiated the Proposed Amendment with the interests of the community ahead of those of Verisign or ICANN org. The RrSG is concerned that this Proposed Amendment will become a final amendment without incorporating feedback from the ICANN community (which will likely propose significant changes to the Proposed Amendment.)” -RrSG

“...GoDaddy has concerns relating to the transparency of the .COM RA Amendment process, as well as a total absence of community consultation by ICANN that informs that process. The crux of the issue is that there is no documented or consistent process for handling these amendments. This is unacceptable and demands urgent reform. GoDaddy urges ICANN to document and make publicly available its process for making amendments. ICANN should also take this opportunity to make improvements on past practice.” Further, “ICANN should build in an opportunity for the community to provide input in advance of ICANN negotiating with Verisign... ICANN needs to re-evaluate how it is taking into account community feedback received in its existing public consultation processes.” -GD

Further, commenters raised concerns about the inclusion of the Registry-Registrar Agreement (RRA) in the proposed Amendment 3 for .COM without including the contracted parties. Since the RRA is an agreement between Verisign and the registrars and ICANN org is not a party to the agreement the commenters suggest the obligations negotiated between ICANN org and Verisign may require registrar obligations and the registrars do not have a means to challenge those requirements.

“I also am concerned about the proposed changes to the registry-registrar agreement that are included as part of the amendment of the registry agreement. Essentially this amounts to creating new obligations for contracted parties and registrants through the back door without policy. ICANN is proposing to create new obligations for parties that are not even at the table in these negotiations. Any changes to the Registry-Registrar agreement that create new obligations for either side cannot be unilaterally imposed by ICANN or the registry operator, but must be negotiated and/or approved by the parties to that agreement, subject to ICANN approval.” -VG

ANALYSIS OF COMMENTS:

ICANN org has followed the established process to negotiate amendments to registry agreements. Initial contractual negotiations are made between the two contracted parties - ICANN org and the registry operator. After both parties agree on the terms of the proposed amendment, ICANN org invites the community to comment on the amendment, through the public comment process, in order to collect valuable community input before proceeding. The

proposed Amendment 3 and proposed binding LOI to the .COM Registry Agreement are a result of this established process.

Moreover, ICANN org utilized the Base RA developed via the multistakeholder process as a basis for the discussions with Verisign and focused a portion of the negotiations related to security and stability enhancements on those terms. Further, ICANN org consciously focused on ensuring the .COM Registry Agreement included obligations for Verisign to mitigate and combat DNS Abuse or DNS Security Threats as this is a subject of significant community dialogue for several years.

While some expressed concerns about a provision in the proposed RRA, ICANN org utilized the standard [RRA Amendment Procedure](#), allowing the RrSG to provide feedback which could then be raised back with Verisign for potential modifications. During the 21-day comment period specified in the RRA Amendment Procedure, no feedback was received from the RrSG on the RRA. At the time the RrSG noted they reserved their right to comment on the .COM Registry Agreement including the RRA during the public comment process, however their comments ultimately did not touch on the RRA.