

Report of Public Comments

Title: .com Registry Agreement Renewal																																	
Publication Date:	1 June 2012																																
Prepared By:	ICANN																																
<table border="1"> <tr> <td colspan="2">Comment & Reply Comment Period:</td> <td colspan="2">Important Information Links</td> </tr> <tr> <td>Open Date:</td> <td>27 March 2012</td> <td colspan="2">Announcement</td> </tr> <tr> <td>Close Date:</td> <td>17 May 2012</td> <td colspan="2">Public Comment Box</td> </tr> <tr> <td>Time (UTC):</td> <td>23:59 UTC</td> <td colspan="2">View Comments Submitted</td> </tr> </table>		Comment & Reply Comment Period:		Important Information Links		Open Date:	27 March 2012	Announcement		Close Date:	17 May 2012	Public Comment Box		Time (UTC):	23:59 UTC	View Comments Submitted																	
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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 [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>																																	
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Greg Ricks (G. Ricks)		GR
Nat Cohen (N. Cohen)	Telepathy, Inc.	NC
Kurt Irmiter (K. Irmiter)	Festival Network Online	KI
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Marilyn Cade (M. Cade)		MC
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Jeremy Hureaux (J. Hureaux)		JH
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Adam Strong (A. Strong)		AS
Chris Chaplow (C. Chaplow)	Andalucia.com S.L.	CC
Jonathan Johnson	Overstock.com, Inc.	JJ

Section III: Summary of Comments

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).

General Support for VeriSign .com Renewal Contract.

- Stability in .com registry operations must be a primary concern to business users. The information provided by VeriSign in the .com documents and posted for public comment covers VeriSign's ability to fulfill those critical requirements. *M. Cade (25 April 2012).*
- ICA generally approves of the contract modifications that enhance cybersecurity, bolster ICANN's audit powers, continue to prohibit the offering of universal wildcard services, and set high performance requirements enhanced by registrar payment credits in the event they are not adhered to. *ICA (1 May 2012)*

Requirement of RPMs through .com Renewal Process.

- MarkMonitor generally supports VeriSign's continued operation of .com registry but urges ICANN to require VeriSign to comply with all new gTLD requirements including URS. *MarkMonitor (25 April 2012)*
- ICANN should revise the contract to require compliance with the main trademark and consumer protection mechanisms ICANN has designated as sufficient and essential for implementation across all new gTLDs. The .com renewal should specify a deadline by which these obligations are required to be implemented for the .com registry so as to make the .com policies consistent with those of the new gTLDs. *INTA Internet Committee (26 April 2012); IPO (17 May 2012)*
- It is inconsistent for INTA and other trademark interests that called for delay of the initiation of UDRP reform consideration so that the performance of the new RPMs could be considered in that context to now try to subvert ICANN's standard policymaking process by urging imposition of URS on .com absent any experience with it. ICA also takes issue with the notion that "harmonization" requires imposition of URS on .com at some future point in time. ICA believes that experience with URS and other new RPMs needs to be thoroughly evaluated after a substantial period of use at new gTLDs before initiating that debate, and also believes that the .com registry is qualitatively differentiable from all other gTLDs and may well deserve and require some distinct contractual anomalies well into the future. *ICA (1 May 2012)*
- Contrary to ICA's assertion, requiring the .com registry to adopt URS is consistent and congruent with INTA's position that the UDRP should not be opened up to any policy review until the gTLD launch is largely behind us and we have the benefit of experience in how the UDRP harmonizes with the URS and other new gTLD RPMs. Opening up UDRP *at this time* of broad new gTLD expansion would lend an element of instability and uncertainty. Once the RPMs are implemented in new gTLDs and running smoothly and once all existing registries have also been brought into the fold of these new procedures, then it may be appropriate to look at all existing dispute resolution procedures and evaluate them as a whole. *INTA Internet Committee (17 May 2012)*
- The proposed .com renewal contract provides the .com registry with a long-term advantage over the new gTLDs by not requiring a reasonable transition to the new RPMs. ICANN's commitment to implementation of smoothly functioning and robust RPMs for the new gTLDs should be cemented by a commitment of expansion of those RPMs to encompass all existing gTLDs in a measured and timely fashion. This will put all gTLDs on a level playing field, ensure equal application of all dispute resolution procedures across all gTLDs, and help promote consumer trust in the DNS. *INTA Internet Committee (17 May 2012)*
- The renewal contract should not be approved until it is amended to require VeriSign to implement applicable RPMs required of new gTLDs, after a stated "ramp-up period" for those RPMs in new gTLDs. *IPC (26 April 2012); IACC (7 May 2012); IPO (17 May 2012)*
- ICANN is correct that the .com renewal contract is not the place to impose experimental, deeply flawed rights protection mechanisms such as the URS. The UDRP already exists as an adequate solution to the discrete and apparently very limited problem of typosquatting. *N. Cohen (24 April 2012)*
- ICA applauds ICANN's rejection of trademark interest entreaties that it impose URS and other untested RPMs on .com through contractual fiat as well as ICANN's recognition that any

consideration of this matter should be within the normal policy development framework. ICANN should initiate the long-delayed URS implementation process so that the community may review its operational aspects and qualifications of prospective arbitration providers well in advance of the first delegations of new gTLDs. *ICA (1 May 2012); G. Kirikos (13 May 2012)*

- Deferring a decision on imposition of URS and other new RPMs on .com does not provide it with a “free pass,” contrary to IPC’s view. Rather, it properly assures that no premature decision on that question will be made until ICANN’s multistakeholder policy process has a full opportunity to consider the initial performance of new RPMs at new gTLDs. That is the reasonable and responsible process that should be followed—imposing URS or other RPMs on more than 100 million .com domains absent any real world experience would be unreasonable and irresponsible. ICA also takes issue with IPC’s attempt to equate new RPMs (e.g. URS) with other changes and technical updates to the proposed .com renewal contract that have been transposed from the standard new gTLD registry agreements and which can be readily differentiated from the new RPMs. *ICA (17 May 2012)*
- Revived uncertainty over the final policy details of the URS as well as the strong possibility that its introduction may be substantially delayed argue even more strongly against imposition of URS on .com registrants through contractual fiat. Given the inclusion of a “URS Summit” line item in the ICANN FY13 Operating Plan and Budget and follow-up inquiries about it with the GNSO Council, ICA is extremely concerned that ICANN staff has discussed URS implementation with only a narrow select group of ICANN stakeholders. ICA rejects the notion that URS policy should be reopened to attain a pricing target that never appeared realistic in the first place. Policy should dictate pricing. Elevating price to an overriding goal risks serious damage to the due process rights of registrants. The URS should be finalized and a credible arbitration provider or providers should be selected, and it should be seen how URS operates before considering its imposition on .com. *ICA (17 May 2012)*

Thick Whois.

- Moving to thick Whois for .com should be discussed with VeriSign as part of the contract discussions; this would move .com into a parity situation with new gTLDs and with the majority of the legacy generic TLDs. *M. Cade (25 April 2012)*
- ICA has no objection to imposition of thick Whois requirements on .com if mandated by the GNSO. *ICA (1 May 2012); G. Kirikos (13 May 2012)*
- While welcoming many of the changes made to the .com contract, ALAC expresses extreme disappointment that ICANN has not yet required .com to use a thick Whois model, which is required for all new gTLDs. ALAC believes that delay of the global PDP on thick Whois runs counter to the global public interest in having this important issue dealt with as quickly as possible. ICANN and VeriSign should not wait for the PDP in order to address thick Whois as an implementation matter and to include a thick Whois requirement in the current contract revision. This would provide all .com registrants with the benefits that ICANN has already stated to be important for any TLD. *ALAC (26 April 2012); INTA Internet Committee (26 April 2012); IPC (26 April 2012)*
- It is unacceptable that the current proposal does not include any requirement to move.com to a thick Whois at any point during the 6-year life of the agreement. ICANN is obligated under

the terms of the expiring .com agreement to insist upon a migration to a thick Whois in the renewal to bring .com into conformance with the overwhelming majority of the five largest gTLD registries; it should be required to be operating by VeriSign by either the effective date or a date certain reflecting a reasonable grace period for operational and transition issues. This migration also would serve the public interest (well-documented advantages of centralized access to Whois data as the thick Whois model provides). *IPC (26 April 2012); C. Chaplow (29 April 2012); IACC (7 May 2012); IPO (17 May 2012)*

- As part of the .com renewal process, a clear and definite commitment for transition to a thick Whois model should be determined and established as a high priority, so this registry is brought into alignment with the Whois data model provided by nearly every other gTLD registry (e.g. adopt thick Whois no more than six months from execution of renewal; do not wait for the next renewal of the .com registry agreement). *INTA Internet Committee (26 April 2012); IPO (17 May 2012)*
- The BC supports VeriSign's continued operation of the .com registry but strongly urges ICANN to require the maintenance of Thick Whois by VeriSign for the .com registry. Thick Whois contributes to addressing the need for timely, unrestricted and public access of Whois information. The BC expects that other ongoing ICANN projects will improve Whois accuracy and responses by privacy/proxy services to relay/reveal requests. *BC (16 May 2012)*
- MarkMonitor generally supports VeriSign's continued operation of .com registry but urges ICANN to require VeriSign to comply with all new gTLD requirements including thick Whois. *MarkMonitor (25 April 2012)*

Whois Protocol Replacement.

- Adoption of a replacement Whois protocol upon approval by ICANN should be required in the .com registry renewal within a specified time frame (e.g. 135 days) with no further exceptions to this requirement. INTA Internet Committee generally supports the proposed roadmap recently published by ICANN and reserves the right to comment further on this issue as it evolves. *INTA Internet Committee (26 April 2012)*

Application of Subsequent Policies Ratified by ICANN.

- Legal language should be included in the contract to add applicability of subsequent policies ratified by ICANN post-contract date. This would prevent the need in the future to wait for contract renewal to harmonize contracts which are out of sync, both time-wise and contents-wise. *ALAC (26 April 2012)*

Equivalent Registry Contracts.

- ICANN should strive over time to eliminate all differences between registry agreements so that transparency and equivalent contracts become the ICANN standard. *R. Andruff (26 April 2012)*

Chief Compliance Officer.

- All gTLD registry contracts should include the requirement for the registry to appoint a chief compliance officer who will be accountable for compliance with contractual obligations to ICANN. *IPC (26 April 2012)*

Single-Character Registrations.

- VeriSign should consider the release of single-character registrations, allocated similar to the .INFO process. *MarkMonitor (25 April 2012)*
- VeriSign as soon as possible should work with ICANN to follow the model used for .info and .biz in the release and allocation process for single letters at the second level, which will benefit those businesses that want to pursue such registrations. *M. Cade (25 April 2012); R. Andruff (26 April 2012)*
- Overstock.com supports the proposed changes to the .com agreement but requests that ICANN consider amendments to the renewal agreement to allow allocation of SCDNs. The proposed agreement for renewal of the 2006 .com Registry Agreement must be amended to allow allocation of single-character domain names (SCDNs), which would bring it in line with terms of the .org, .info, .biz and .mobi Registry Agreements (per Section 4.2 of 2006 agreement) and provide equitable treatment to VeriSign as a registry operator (per Section 3.2(b) of 2006 and renewal agreements (covenants of ICANN)). Such amendment should also be done because Articles I and II of ICANN's bylaws require it to apply documented policies neutrally, objectively and fairly and preclude ICANN from singling out any party for disparate treatment, and such amendment would not create competition issues. The proposed agreement should be amended to remove SCDNs from the Schedule of Reserved Names in Appendix 6 so their allocation is not prohibited under Section 3.1(d), and to add a provision requiring VeriSign to put forth a proposal to ICANN via the Registry Services Evaluation Process on how SCDNs allocation would take place or alternatively to allow VeriSign to allocate SCDNs in the same manner as the new gTLDs. *J. Johnson (25 April 2012)*
- Disagree with Overstock's focus on SCDNs in its comments; the interests of registrants of 100 million domain names should take priority over, at most, 33 registrants. *G. Kirikos (13 May 2012)*

Objections to Presumptive Renewal and Pricing Provisions.

- As part of this current agreement renewal process, ICANN must remove the presumptive renewal and pricing provisions from the contract. How can ICANN claim to have a multistakeholder model if VeriSign has the exclusive right to renew this contract indefinitely with 7% price increases every four out of six years? ICANN should not sit back and declare "legal liability" if it does not renew the VeriSign contract and ignore the interests of the global Internet community. *K. Richerdson (25 April 2012)*
- We agree that the presumptive renewal clause was a mistake and must be eliminated in all registry contracts. The DOJ should step in and declare it illegal in the alternative as it is costing consumers hundreds of millions of dollars in excess fees annually. *G. Kirikos (13 May 2012)*
- ICANN's approval of the settlement agreement with VeriSign is a clear example of "regulatory capture"; instead of limiting VeriSign's control of the .com name space for the benefit of the Internet community at large, ICANN advanced a settlement that allowed VeriSign to reap monopoly profits at everyone else's expense (can raise .com fees 7% annually for four out of six years). VeriSign leveraged its litigation into a complete renegotiation of its contract with ICANN staff who seemingly played right along to avoid further litigation. As part of the

settlement, ICANN is also getting from VeriSign a fee of \$6-\$12 million per year: is this not a conflict of interest for ICANN? *C. Morningstar (25 April 2012)*

- Why are the .com domain prices going up over time when the trend in the technology area is for prices to decrease over time? *C. Dalton (28 Mar. 2012); G. Kirikos (21 April 2012); G. Ricks (23 April 2012); D. Pryor (23 April 2012); K. Pitts (23 April 2012); K. Irmiter (24 April 2012); M. Berkens (25 April 2012); K. Dabney (25 April 2012); DomainCocoon (26 April 2012); N. Pauli (26 April 2012)*
- There are registries that charge less than 1/3 the price of VeriSign. The renewal should cap price increases. There is no reason for periodic price increases except to increase VeriSign's profits (i.e., infrastructure upgrades, already made, are not a valid reason). *M. Demirci (26 April 2012); J. Hureaux (26 April 2012); DomainCocoon (26 April 2012); G. Kirikos (13 May 2012)*
- Mr. Hureaux makes an important point by mentioning the essential facilities doctrine. There would be a way to split operation of the .com registry so that VeriSign did not have control of it and competitors would have access (e.g. could split the "resolution of names" from the domain registration aspect of a registry, just as is done with the root zone). *G. Kirikos (13 May 2012)* referring to *J. Hureaux (26 April 2012)*.
- The larger .com transaction volume should make .com costs lower (especially given much lower registration prices for .net for which VeriSign operates a similar registry infrastructure). *DomainCocoon (26 April 2012); ICA (1 May 2012)*
- ICANN should be doing everything in its power to force VeriSign to lower its prices. *N. Cohen (24 April 2012); G. Kirikos (13 May 2012)*
- VeriSign is using the money it makes from .com to subsidize its new lines of business. VeriSign should be focused on running and promoting .com instead of putting its windfall profits into programs that hedge against .com domain names. It is a serious conflict of interest if VeriSign operates TLDs other than .com. *K. Dabney (25 April 2012)*
- Registrars, through their silence, are not representing the best interests of registrants who would naturally oppose monopolistic price increases; this silence demonstrates the "regulatory capture" of ICANN, that registrars are not acting as an independent voice to keep registries in check but instead hope to become monopolistic registries themselves and gouge the public through unregulated prices in new gTLDs. IPC is also silent on the unabated price increases in these contracts but is urged to voice its concerns during the reply period. *G. Kirikos (13 May 2012)*
- Comfortable with the VeriSign renewal, but there is no reason for such drastic price increases to be included in this contract. *A. Allemann (23 April 2012)*
- The proposed price increases seem exorbitant since no new substantive offerings are being added to the contract; however, MarkMonitor would support the price increases should VeriSign comply with the new gTLD requirements. *MarkMonitor (25 April 2012)*
- Notwithstanding ICANN's restriction of its own bargaining position with VeriSign precluding competitive bid and enabling price increases without justification, a requirement should be imposed on VeriSign and all other gTLD registry operators to provide a public explanation of the justification for any future price increases. Such a requirement is not a material term, which ICANN would be precluded from imposing or altering in this renewal agreement. *ICA (1*

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- It is lamentable that ICANN has never commissioned an economic study to determine the base cost of providing registry services or to address the issue of whether a large registry such as .com enjoys economies of scale that make its per domain operating costs lower than average. *ICA (1 May 2012); G. Kirikos (13 May 2012)*
- Since there will be no market testing of .com pricing through a contract rebid process, it is all the more important that the new gTLD program is managed to maximize the probability that one or more new general purpose generic TLDs brings outside pricing pressure to bear on .com and other incumbent registries. *ICA (1 May 2012)*

Competitive Contract Bidding.

- The .com contract should go out for competitive bidding; otherwise it is unfair and not free enterprise. *J. Matthews (5 April 2012); D. Pryor (23 April 2012); K. Pitts (23 April 2012); K. Irmiter (24 April 2012); M. Berkens (25 April 2012); B. Gilbert (25 April 2012); B. Baughman (25 April 2012); A. Elliott (25 April 2012); K. Dabney (25 April 2012); DomainCocoon (26 April 2012); A. Strong (27 April 2012); G. Kirikos (13 May 2012)*
- ICANN should deploy competitive bidding. It is time to disband the cozy DNS “club” consisting of ICANN and its insiders that works against the public interest. The DOJ should step in and break the anticompetitive deal between ICANN and VeriSign. *G. Kirikos (21 April 2012 & 13 May 2012); G. Ricks (23 April 2012); N. Cohen (24 April 2012)*
- Having no competitive bidding process for .com puts global stakeholders at an extreme disadvantage to U.S.-based ones. A competitive bid would at the very least bring out international or multinational players who would perhaps table alternative governance structures and legal procedures that were fairer to all global stakeholders. *M. Jeftovic (25 April 2012); G. Kirikos (13 May 2012)*
- The VeriSign contract should not be renewed; it is anticompetitive, does not serve the public interest and does not reflect the global Internet. *G. Kirikos (21 April 2012); G. Ricks (23 April 2012); K. Pitts (23 April 2012); N. Cohen (24 April 2012); K. Irmiter (24 April 2012); M. Berkens (25 April 2012); K. Dabney (25 April 2012); DomainCocoon (26 April 2012); N. Pauli (26 April 2012)*

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.

Rights Protection Mechanisms.

The .com renewal proposal does not include a requirement to comply with the rights protection mechanisms (RPMs) developed for new gTLDs: Uniform Rapid Suspension (URS), Post-Delegation Dispute Resolution Process (PDDRP), and the Trademark Clearinghouse. Those RPMs have so far only been approved in the context of new gTLDs.

As highlighted by ICA and others, the URS and PDDRP are new and untested, and arguably require a "ramp-up" period to ensure that they are robustly designed and implemented before they are asked to absorb the full workload of the entire gTLD namespace. Secondly, 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. When creating the new gTLD rules, existing registrants (and registries) were not consulted with the idea that those protections would be implemented in existing gTLDs without further community discussion.

The Trademark Clearinghouse, as defined in the Applicant Guidebook, works in the period of a registry operational start-up and so would not be applicable to .com.

Finally, these RPMs are not in any other existing registry agreement, and under current requirements ICANN has no basis for including them into existing registry agreements; the renewal agreement should be similar in terms with the other largest registries.

Thick Whois.

While the migration to thick Whois in the renewal would bring .com into conformance with the majority of the five largest gTLD registries, as indicated by IPC and others; the question of transitioning the largest existing registry to "thick" Whois raises operational and other implementation issues that require further community discussion and consideration. This has been recognized by the GNSO, as that body agreed to undertake a formal Policy Development Process (PDP) in the matter (see, <http://gnso.icann.org/resolutions/#201204>). Once approved, such a change can be implemented separately from the renewal process.

Whois Protocol Replacement.

ICANN agrees with INTA regarding the adoption of a new protocol to replace current Whois, while also appreciates Verisign commitment to support and deploy the new protocol delineated in the proposal. Language in the renewal requires Verisign to adopt the new protocol within a time certain if it is commercially reasonable in the context of the overall operation of the registry. The current language is appropriate because it is difficult for a company to agree to implement a new protocol that is not yet fully specified. The current commitment advances the transition to the new protocol. It is also worth noting that Verisign is agreeing to support the standardization effort in the IETF and is already delivering on that commitment.

Application of Subsequent Policies Ratified by ICANN.

ICANN notes that VeriSign (like all other gTLD registries and registrars) is already obligated to comply with Consensus Policies that are developed and recommended by the GNSO and approved by the ICANN Board (subject to restrictions in existing registry agreements).

Equivalent Registry Contracts.

ICANN agrees with R. Andruff about the benefits that eliminating differences between registry agreements would bring and is pursuing that goal in the long term. Also, it should be noted that ICANN is constrained by the terms of the current agreements.

Chief Compliance Officer.

ICANN agrees with IPC that a registry's compliance with its contractual obligations is important, however we believe that how it achieves this is an internal management issue for the registry operator rather than ICANN mandate a new requirement for a dedicated officer. New compliance tools are included in the agreement such as cooperation in actions against registrars who are in breach.

Single-Character Registrations.

MarkMonitor and others suggested that as part of the renewal process the issue of single-character registrations be considered. ICANN regards single-character registrations as a new registry service and as such subject to the Registry Services Evaluation Process (RSEP). It would be up to the registry operator (independent of the renewal process) to request such a change through the RSEP.

Objections to Presumptive Renewal and Pricing Provisions.

The current agreement (Section 4.2) specifies that the pricing and renewal provisions (among others) are not subject to change through the agreement renewal process.

Both the current .com registry agreement and the proposed renewal agreement permit Verisign to increase the price it charges registrars for domain names registrations four times during the six-year term with each increase being no greater than 7%. This provision was negotiated between Verisign and the U.S. Department of Justice in the existing agreement. Other large gTLD agreements (.biz, .info, .net, and .org) allow price increases of 10% per year in each of the six years of the agreement. Besides the contractual restriction that limits our ability to change this clause, ICANN believes that the best path is to leave the original agreement between the U.S. Government and Verisign intact.

ICANN's registry agreement for new gTLDs and registry agreements for sponsored gTLDs (.aero, .asia, .cat, .coop, .jobs, .mobi, .museum, .post, .pro, .tel, .travel, and .xxx) do not include any price controls.

ICANN agrees with ICA and others that the new gTLD program is anticipated to provide a way for a more competitive environment (including pricing competition) with more alternatives to .com and existing gTLDs.

Competitive Contract Bidding.

The current registry agreement precludes a competitive bidding process to provide .com registry services. The renewal provisions in the current .com Registry Agreement are consistent with all the

other ICANN gTLD agreements. All ICANN's gTLD registry agreements essentially provide that they will be renewed absent a serious breach of the agreement. These renewal provisions are based on stability and security concerns, i.e., to encourage long-term investment in robust TLD operations. This has benefitted the community in the form of reliable operation of the registry infrastructure. ICANN does not have the right under the current .com Registry Agreement to unilaterally refuse to renew the agreement or to bifurcate registry functions.