



**Comment on Proposed
Amendment to .COM
Registry Agreement**

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Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter¹:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

Comment on Proposed Amendment to .COM Registry Agreement²

The Business Constituency (BC) generally supports amendment of the .COM registry agreement to match its expiration date to the new Root Zone Maintenance Agreement, seeing this as an important way to assure security and stability of the root server system through the period of IANA transition.

The BC notes that the proposed 2024 contract extension is the same result that would be obtained if the incumbent .COM operator were to extend its present agreement when it expires in 2018. Based on past and present performance, Verisign would likely meet the requirements to exercise its option for presumptive renewal in 2018.

However, the BC has several questions and requests regarding the extension of the .COM contract at this time.

First, the BC asks ICANN to clarify the status and renewal process for Verisign's Cooperative Agreement with NTIA, which expires in 2018³. We note that ICANN is not a party to the Cooperative Agreement, but we are keen to understand the factors and decisions that would determine whether the Agreement would be extended beyond 2018 and therefore encourage ICANN to engage in dialogue with NTIA and report back to the community on this matter.

Second, the BC requests that Verisign be required to confirm that it will implement global consensus policy for Thick WHOIS within .COM, per the 2018 deadline published by the Implementation Review Team (IRT)⁴. The BC is aware that national data privacy laws may restrict or prevent the actual transfer of registrants' personal information to Verisign servers located in the United States. Accordingly, the BC requests that Verisign begin work now on designing an alternate means of providing the functionality of centralized access to Thick WHOIS data.

Third, the BC notes that a Policy Development Process (PDP) now underway that is looking at Uniform Rapid Suspension (URS) and other rights protection mechanisms (RPMs) from the new gTLD program,

¹ Business Constituency Charter, at <http://www.bizconst.org/charter>

² See <https://www.icann.org/public-comments/com-amendment-2016-06-30-en>

³ Root Zone Maintainer Agreement, 2016, at https://www.icann.org/iana_imp_docs/63-root-zone-maintainer-agreement-v-1-0

⁴ Implementation Review Team plan, 29-Jul-2016, at <https://community.icann.org/display/TWCPI/IRT+Meetings?preview=/48348893/61603999/thick-whois-transition-path-scorecard-25Jul16-clean.pdf#IRTMeetings-26July2016>

and that the engaged RPM Review Working Group (WG) is required by its Charter to address the question of whether some or all of those RPMs should be applied to all gTLDs — including legacy TLDs. As a condition of the proposed .COM amendment, the BC requests confirmation from ICANN and Verisign that the .COM Registry Agreement would require implementation of rights protection mechanisms (RPMs) that fit within the definition of current and future Consensus Policies and are properly approved by ICANN's board⁵.

Finally, the BC encourages Verisign to voluntarily adopt in .COM relevant aspects of the standardized registry contract used in the recent expansion of gTLDs. The BC supports universal adoption of the new gTLD registry agreement, which includes RPMs, GAC Safeguards, and Public Interest Commitments (PICs), while noting that the new gTLD registry agreement does not regulate domain name prices and permits registry-registrar integration. We note that .COM pricing is currently subject to Amendment 32 of the Cooperative Agreement⁶, imposed by the NTIA on November 29, 2012, and that this Amendment

⁵ Section 3.1(b) of the 2012.COM Registry Agreement specifies Consensus Policies, at <https://www.icann.org/resources/pages/agreement-2012-12-05-en>:

(b) Consensus Policies.

(i) At all times during the term of this Agreement and subject to the terms hereof, Registry Operator will fully comply with and implement all Consensus Policies found at <http://www.icann.org/en/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with ICANN's Bylaws and as set forth below.

(ii) "Consensus Policies" are those specifications or policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 3.1(b)(iv) below. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with ICANN's Bylaws, and any Consensus Policy that is adopted through such a revised process and covering those topics listed in Section 3.1(b)(iv) below shall be considered a Consensus Policy for purposes of this Agreement.

(iii) For all purposes under this Agreement, the policies identified at <http://www.icann.org/en/general/consensus-policies.htm> shall be treated in the same manner and have the same effect as "Consensus Policies."

(iv) Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following: (1) issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, Security and/or Stability of the Internet or DNS; (2) functional and performance specifications for the provision of Registry Services (as defined in Section 3.1(d)(iii) below); (3) Security and Stability of the registry database for the TLD; (4) registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars; or (5) resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names). Such categories of issues referred to in the preceding sentence shall include, without limitation:

- (A) principles for allocation of registered names in the TLD (e.g., first-come, first-served, timely renewal, holding period after expiration);
- (B) prohibitions on warehousing of or speculation in domain names by registries or registrars;
- (C) reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (a) avoidance of confusion among or misleading of users, (b) intellectual property, or (c) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration);
- (D) maintenance of and access to accurate and up-to-date information concerning domain name registrations;
- (E) procedures to avoid disruptions of domain name registration due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination; and
- (F) resolution of disputes regarding whether particular parties may register or maintain registration of particular domain names.

⁶ https://www.ntia.doc.gov/files/ntia/publications/amendment_32_11292012.pdf

generally froze the wholesale price of .Com domains at \$7.85 until such time that Verisign successfully petitions the Department of Commerce for relief from price restrictions upon demonstration “that it no longer has market power”.

The BC believes that .COM should embrace the standardized new gTLD registry agreement at this time, instead of deferring that decision until 2024 when the proposed agreement will expire; or earlier than 2024, if any or all of these aspects of the standard new gTLD registry contract should become Consensus Policy as a result of WG recommendations that are subsequently adopted by ICANN’s Board. The BC acknowledges that there is an open legal question whether any of these aspects can be enforced against .Com registrants unless they become Consensus Policies or are adopted through a further amendment of the .COM registry agreement made subsequent to the one we are addressing in this comment letter

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This comment was drafted by Steve DelBianco, Denise Michel, Chris Wilson, Hibah Hussain, Marilyn Cade, and Phil Corwin. It was approved in accordance with the BC charter.