

ALAC Statement on the Proposed Renewal of the .ORG Registry Agreement

Background

The proposed renewal of the .ORG Registry Agreement, along with those for .BIZ, .INFO and .ASIA, are the latest in a series of Registry Agreement renewals over the last several years. In most cases, the proposed renewal Agreement followed (with some variations) the form of the then-current “base Registry Agreement,” first developed for use with “new gTLD” registries. These renewals have included Registry Agreements for .COOP, .MUSEUM, .NET, .MOBI, .TEL, .CAT, .PRO, .JOBS, and .TRAVEL.

ALAC generally refrained from commenting on these prior proposed Registry Agreement renewals, with the exception of the proposed renewal of the .NET Registry Agreement. Unlike most other renewals, the proposed .NET renewal Agreement did not adopt the form of the then-current base Registry Agreement. Instead, the proposed renewal agreement was based on the .NET Registry Agreement it was replacing, with modifications agreed between ICANN and Verisign, along with certain provisions from the base Registry Agreement and certain provisions incorporated into legacy gTLD Registry Agreements (e.g., the 2013 .ORG Registry Agreement). In June 2017, the ALAC submitted the following statement (quoted here in its entirety):

The ALAC does not have any comment to make on the changes to the content of the contract overall as we believe that much of it has been predetermined by agreement. However, the increasing cost of .NET domains is a concern as it would make them unaffordable and thus an accessibility issue for end-users, especially for those in already underserved regions. The proposed 10% annual increase which all goes to the registry is significantly high and should be re-considered. A query was raised as to whether or how .NET funds are returned to serve the Internet community in line with the redistribution of .org funds into the community by the Internet Society, to support Internet development.

To be accurate, the provision in the .NET Agreement¹ allowed a 10% *maximum* price increase (i.e., a “cap”); it did not compel a 10% price increase. In the case of .NET, this distinction was largely a formality, since Verisign (the .NET Registry Operator) had in fact instituted the full 10% price increase each year since at least 2005.

The current .ORG Registry Agreement includes the 10% price cap provision, as do the current .BIZ and .INFO Registry Agreements. The current .ASIA Registry Agreement does not.

¹ Although the 2017 ALAC Statement called this a “proposed 10% annual increase” for .NET domains, the 10% cap was in the then-current NET Registry Agreement, as well as prior agreements. It was not a new proposal.

There is no price cap in the proposed .ORG Registry Agreement, consistent with the base Registry Agreement, the current .ASIA Registry Agreement, and the proposed .BIZ and .INFO Registry Agreements. The Public Comment page offers the following explanation for this shift:

Pricing for Domain Name Registrations and Registry Services (Section 2.10 of the .info renewal agreement): In alignment with the base registry agreement, the price cap provisions in the current .ORG agreement, which limited the price of registrations and allowable price increases for registrations, are removed from the .ORG renewal agreement. Protections for existing registrants will remain in place in line with the base registry agreement. This change will not only allow the .ORG renewal agreement to better conform with the base registry agreement, but also takes into consideration the maturation of the domain name market and the goal of treating the Registry Operator equitably with operators of new gTLDs and other legacy gTLDs utilizing the base registry agreement.

Statement

ALAC and At-Large have a particular interest in .ORG, due to its connection to the Internet Society. As noted in ALAC's .NET comment, a significant portion of .ORG registration fees "are returned to serve the Internet community [through] redistribution of .org funds into the community by the Internet Society, to support Internet development." Notably, this includes support for the IETF, an "organized activity" of the Internet Society (ISOC). The IETF is a critical organization in the development, safety, security, and resiliency of the Internet and the DNS. Furthermore, ISOC's goals and priorities, while far broader than At-Large (and even ICANN), parallel those of At-Large and the interests of end-users. Many At-Large Structures are also ISOC Chapters, further demonstrating the commonality of interests.

ALAC is generally in favor of standardizing Registry Agreements. Consistent with this stance, ALAC did not object to the base Registry Agreement in any of its iterations, or to its use in prior renewals. This standardization allows for transparency and predictability in connection with Registry Agreements and makes it easier for the community, which only has to focus on one contract (for the most part) instead of many disparate contracts. The use of addendums to handle necessary variations is a useful approach to diverging from the standard, while maintaining a consistent base Registry Agreement. Importantly, the base Agreement also commits these Registry Operators to the Public Interest Commitments (PICs).

Removing the price cap from .ORG should not, however, be viewed merely as a standardization measure. It is potentially a significant change for the TLD. As noted above, ALAC did express

concern about the potential for price increases in .NET when that Registry Agreement was being renewed.

However, uncapped pricing does not automatically translate to significant price increases. While uncapped prices make significant price increases possible, mission, business strategies and market forces may well make major price increases inappropriate or ill-advised.

When considering this issue in the context of the .ORG renewal, it is important to note that Public Interest Registry (PIR) has not increased rates at all over the last three years, even though it had the right to increase prices cumulatively by more than 30% during that time period. It is our understanding that when PIR has contemplated an increase in .ORG pricing, the matter has been discussed thoroughly by the Board, which analyzed the pros and cons, taking into account the potential benefits, the impact on the market, and the impact on the image of PIR. This approach is consistent with the mission and priorities of Public Interest Registry, as set forth on its website at <https://pir.org/resources/faq/>:

As our name implies, we exist to serve the public interest online. Our globally diverse team is committed to providing a stable online platform where everyone has a voice. As an advocate for collaboration, safety and security on the Internet, Public Interest Registry's mission is to empower the global noncommercial community to use the Internet more effectively, and to take a leadership position among Internet stakeholders on policy and other issues relating to the domain naming system.

In sum, there is no particular reason to believe that PIR will engage in excessive price increases; rather, there are substantial reasons to believe that PIR will consider the public interest and act in a measured and prudent fashion when it considers possible price increases. Nevertheless, there is nothing in the Registry Agreement that actually prevents PIR from raising prices to any level it chooses.

It may seem counterintuitive, but price increases could be a positive development in the DNS from the broader end-user perspective. The capped prices of the legacy TLDs represented, and continue to represent, a price point that is difficult for new entrants to compete with, which may distort the market in general and the incentives of new entrants in particular. The capped prices may also contribute to confusion, phishing, fraud and abuse, and fewer choices in the primary market for domains. While complex economic analysis is well beyond the scope of this comment, an increase in the median price of gTLDs could be good for competition, security and trust in the domain name space.

The dynamics may be different in the context of domain name renewals. When a domain name has been actively used by an entity for many years, e.g, for numerous emails as well as a

website, there may be significant switching costs for the registrant. The renewal Agreement recognizes this, to an extent, in Section 2.10. Section 2.10(c) of the proposed .ORG Registry Agreement includes the following sentence: “The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit **abusive and/or discriminatory Renewal Pricing practices** imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices.” [emphasis added] However, Section 2.10(c) merely imposes the obligation to have uniform renewal pricing, which would only prohibit certain abusive renewal practices. Section 2.10(b) provides some additional “notice” protections for renewing registrants, which will allow registrants to lock in the current renewal price by renewing for up to 10 years. While these steps may not fully protect the interests of renewing registrants, this concern is dampened considerably here by the mission, priorities and practices of PIR.

Of course, the future is unpredictable. While ALAC does not object to the removal of the price cap for .ORG, it remains concerned about the future effects this could have. Therefore, it is important that ICANN carefully monitor and study the effect of the removal of price caps in .ORG and other TLDs, any resulting price increases, the market responses to those price increases, and the secondary effects of these price increases. ICANN has previously conducted economic studies of competitive effects in domain name markets. ICANN should do so again here. For a change of such potential significance, ICANN should commit to commissioning an economic study of the competitive effects of lifting price restrictions. If these effects run counter to ICANN’s mission and core values, ICANN may need to take significant corrective action. But ICANN needs knowledge, data, metrics and analysis to evaluate these significant changes in the DNS and their effects. An economic study will provide the basis for future evaluations and inform future decision-making.