

Steve Crocker, ICANN Board Chair

Dear Steve,

We write to you as the chairs of three ICANN entities (the At-Large Advisory Committee, the GNSO Business Constituency, and the GNSO Intellectual Property Constituency) to express our deep disappointment about the Board's decision, taken behind closed doors on June 23, 2012, to renew the .com agreement with Verisign without requiring the registry operator to move toward a thick Whois structure.

Our organizations have already expressed, in our written comments filed with ICANN and elsewhere, why we believe this decision is wrong on the merits. See [add LINKS to public comments]. In this letter, we wish to emphasize how the way this decision was taken undermines ICANN's credibility as the exemplar of a multi-stakeholder model for management of the Domain Name System.

In the Affirmation of Commitments signed in 2009, ICANN pledged "to adhere to responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration." That pledge was violated in the case of the .com renewal. The decision to renew the .com agreement without requiring migration to the thick Whois structure contradicted the reasoned and virtually unchallenged views of numerous public commenters, including our three groups, and did so, not only without a "detailed explanation" of why these views were rejected, but without any explanation whatsoever.

For the Board to take final action on the .com agreement in private, five days prior to a long-scheduled public forum session on the topic, is highly objectionable, and marks a failure to meet the standards of accountability and transparency to which ICANN also committed itself in the Affirmation of Commitments.

The decision also undermines the credibility of ICANN's contractual commitments, and more broadly its ability to act as an effective surrogate for the ICANN community as a whole on contract negotiations. In its current agreement with Verisign, ICANN pledged to conform the .com renewal to the terms of the registry agreements with the five next largest gTLD operators. Four of those five agreements require thick Whois, as will all of the hundreds of gTLD registry agreements into which ICANN expects to enter in the next couple of years. Yet ICANN inexplicably failed to implement this commitment in the .com renewal agreement.

In negotiating the .com renewal agreement, as with its hundreds of other agreements with accredited registrars and gTLD registries, ICANN is at the table, while many businesses, organizations, and individual domain name registrants whose interests are vitally at stake are excluded. If the ICANN model is to succeed, we must be able to count on ICANN to act, as our surrogate, and in the public interest, in conducting these critical negotiations. In this instance, ICANN failed us. We are extremely concerned about the precedent that has been set for future contractual negotiations, including those currently underway to revise the Registrar Accreditation Agreement.

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We are well aware, of course, that the GNSO Council will be launching a Policy Development Process on the issue of thick Whois. We plan to participate actively in that process and to do what we can to expedite its conclusion. But the availability of a PDP is no substitute for ICANN living up to its commitments to the entire community, as embodied in both the Affirmation of Commitments and in its contractual obligations. We are disappointed that in this important instance, ICANN has failed to do so.

[Olivier]

[Marilyn]

[Steve]

Ccs: