Cross-reference: At-Large Workspace: ISOC Sells PIR

Reference: Move to increase .COM prices 03 January 2020

Reference: ICA Statement on ICANN's announced changes to the .COM registry agreement 03 January 2020

Brief Overview

**Purpose:** This public comment proceeding is to obtain community input on the proposed amendment No. 3 to the .COM Registry Agreement (Amendment 3), and accompanying framework for ICANN 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.

**Current Status:** Verisign is the registry operator of the .COM top-level domain (TLD). In addition to the .COM Registry Agreement (RA) between ICANN and Verisign, the United States Department of Commerce (DOC) and Verisign maintain the Cooperative Agreement for Verisign's operation of the .COM TLD.

On 26 October 2018, following a review and deliberation by the U.S. Government, Verisign and the DOC entered into Amendment 35 of the Cooperative Agreement (Amendment 35). In addition to extending the Cooperative Agreement, Amendment 35 permitted Verisign to seek certain changes to the .COM Registry Agreement that are set forth in the proposed Amendment 3.

The proposed Amendment 3 and the proposed LOI arise from obligations in amendment No. 1 to the .COM Registry Agreement (Amendment 1), dated 20 October 2016. Amendment 1 required the parties to cooperate and negotiate in good faith to amend the .COM Registry Agreement 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 or the .COM TLD.

Together, the proposed Amendment 3 and the proposed binding LOI satisfy the parties' obligations under Amendment 1.

**Next Steps:** Following review of all of the public comments received, ICANN org will prepare and publish a summary and analysis report of the comments received. The report will be provided to the ICANN Board of Directors, and in consultation with the Board, ICANN org will make a decision regarding the proposed Amendment 3 and the proposed binding Letter of Intent between ICANN and Verisign.

Section I: Description and Explanation

The proposed Amendment 3 to the .COM Registry Agreement (Amendment 3) and the proposed binding Letter of Intent (LOI) satisfy the party's agreement to negotiate certain terms described in the first amendment to the .COM Registry Agreement (Amendment 1), dated 20 October 2016. 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 or the .COM top-level domain (TLD).

The proposed Amendment 3, along with the proposed binding LOI, satisfy these obligations. Together, the two documents accomplish five primary objectives:

- Alignment of certain terms of the .com RA with Amendment 35 to the Cooperative Agreement, including the .COM maximum pricing provision for registry services
- Alignment of certain technical and reporting obligations for the .COM TLD with those in the Base gTLD Registry Agreement
- Incorporation of commitments related to the implementation of the Registration Data Access Protocol (RDAP)
- 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
- Additional funding to ICANN to continue to conduct, facilitate and support activities that preserve and enhance the security, stability and resiliency of the DNS, in support of Verisign's and ICANN's longstanding commitment in this area and ICANN's core mission to ensure the stable and secure operation of the Internet's unique identifier systems

Alignment with Amendment 35 of the Cooperative Agreement
The price for .COM Registry Services has been static at $7.85 since 2012. This price freeze was established in Amendment 32 of the Cooperative Agreement. Under Amendment 35, 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 price for .COM registry services, up to a maximum of 7 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.

In addition, under the proposed Amendment 3, the parties also agreed to restrict price increases due to a new consensus policy or documented extraordinary expense resulting from an attack on the security or stability of the DNS, to a maximum of seven percent annually, but only in those years when no other price increase is taken (Policy/S&S Increase).

ICANN org’s mission is to ensure the security and stability of the Internet’s unique identifier systems. ICANN org is not a price regulator and will defer to the expertise of relevant competition authorities. As such, ICANN has longdeferred to the DOC and the United States Department of Justice (DOJ) for the regulation of pricing for .COM registry services.

Given the restrictions under the proposed Amendment 3 on the wholesale price charged by Verisign to registrars for .COM registry services, if all price increases are taken (excluding Policy/S&S Increases), the initial and renewal price for a .COM domain name registration cannot exceed $10.26 (US) until October 2026.

The proposed Amendment 3 retains built-in registrant protection. As the registry operator, Verisign continues to be required to provide at least six months’ notice to registrars of any price increase. This allows registrars, on behalf of their registrant customers, to register or renew .COM domain names during the notice period for up to a 10-year total registration term, at the then-current price, prior to any increase. This allows the ability to lock-in current wholesale prices for up to 10 years.

In addition, the proposed Amendment 3 reflects language in Amendment 35 to the Cooperative Agreement clarifying that the restrictions on Verisign's ownership of ICANN-accredited registrars in the .COM RA are intended to apply solely to the .COM TLD.

**Alignment of Certain Technical and Reporting Requirements with the Base RA**

The Base gTLD Registry Agreement ("Base RA") was developed to support the 1200+ new gTLD Registries created under the 2012 New gTLD Program. It contains standardized technical and reporting obligations for registry operators of new gTLDs. Over time, ICANN has been working to standardize the technical and reporting requirements across all gTLDs to the extent possible and practical to ensure technical and operational consistency across the gTLDs.

The proposed Amendment 3 to the .COM RA includes updates to the following technical and reporting specifications to bring certain requirements more in line with those of the Base RA:

- **Registry Data Escrow (Appendix 1A & 2A)**
  - The updated Appendix 1A is similar to Part A of Specification 2 of the Base RA.
  - These changes will take effect following an update to the three-party data escrow agreement among Verisign, the data escrow provider, and ICANN org, targeted for 120 days following the execution of proposed Amendment 3.

- **Registration Data Publication Services (Appendix 5A)**
  - The updated Appendix 5A is based on Sections 1 and 3 of Specification 4 of the Base RA.
  - These changes will take effect 120 days after the proposed Amendment 3 is executed.

- **Zone File Access (Appendix 3A)**
  - This updated Appendix 3A is based on Specification 4, Section 2 of the Base RA.
  - These changes will take effect 120 days after the proposed Amendment 3 is executed.

- **Registry Reporting (Appendix 4A)**
  - This updated Appendix 4A is based on Specification 3 of the Base RA.
  - These changes will be reflected for the May 2020 reporting month in the report provided by 20 June 2020.
  - ICANN and Verisign also agreed to add two new reporting fields to the Per-Registrar Transactions Report to record the usage of the "Consolidate/Sync Service" offered by Verisign as transactions. The Consolidate/Sync Service, authorized since 2003, allows registrants to extend the term of their registration expiration dates via their registrar. In addition to adding the reporting, the parties also agreed to modify Section 7.2(a) (Registry Level Fees) of the .COM RA to include these transactions in the Registry-Level Transaction Fee in a prorated manner based on the standard per year transaction fee of $0.25. This treatment is consistent with other gTLDs which are approved for a similar service.

**Incorporation of Commitments related to the Implementation of the Registration Data Access Protocol (RDAP)**

ICANN org recently entered into negotiations with the gTLD Registries Stakeholder Group (RsSG) and the Registrars Stakeholder Group (RsSG) to define 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 Registrar Accreditation Agreement (RAA).

The proposed Amendment 3 includes provisions related to the implementation of RDAP. ICANN and Verisign have agreed to an initial set of requirements for the RDAP Service Specification based on discussions with a working group of registries and registrars focused on RDAP. Given that the negotiations with the stakeholder groups are on-going, ICANN and Verisign have also agreed under the proposed Amendment 3 to work together in good faith to amend the .COM Registry Agreement in the future as may be necessary and appropriate to align the requirements with those resulting from the negotiation between ICANN and the RsSG for the Base RA as it relates to RDDS.

**DNS Security**
ICANN's mission is to ensure the stable and secure operation of the Internet's unique identifier systems. Verisign has a long history of helping to protect the security of the Internet and promoting activities that preserve and enhance the security and stability of the DNS. ICANN and Verisign have a shared interest in combating DNS security threats such as phishing, malware distribution and botnets. As part of this commitment, Appendix 11 (Public Interest Commitments) of the proposed Amendment 3, contains certain commitments that directly relate to the mitigation of DNS security threats. The requirements are based on Specification 11, Sections 3A and 3B of the Base RA.

In addition to the contractual requirements in the proposed Amendment 3, ICANN and Verisign have agreed on a framework for working together to support additional enhancements to the security, stability, and resiliency of the DNS, including to help combat DNS security threats. This agreement is in the form of a proposed binding LOI between Verisign and ICANN.

Under the LOI, Verisign and ICANN agree to work in good faith with the ICANN community and within ICANN processes to develop best practices for ICANN's contracted parties that can be used to create potential new contractual obligations, tools, methods and metrics to help measure and mitigate DNS security threats.

**Funding to Support ICANN's Initiatives**

The proposed LOI also provides that Verisign will contribute U.S. $20 million dollars over five years, beginning on 1 January 2021, to support ICANN's initiatives to preserve and enhance the security, stability and resiliency of the DNS, including root server system 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.

**Next Steps**

The proposed Amendment 3 includes an updated Registry-Registrar Agreement (RRA) as Appendix 8A, based on several of the proposed changes to the registry agreement and for consistency with other RRAs. For added transparency, the proposed changes to the RRA are included in redline format to simplify comparison with the current RRA. In parallel with this public comment period, the proposed RRA will be processed in accordance with the RRA Amendment Procedure.

Following review of all of the public comments received, ICANN org will prepare and publish a summary and analysis report of the comments received. The report will be provided to the ICANN Board of Directors, and in consultation with the Board, ICANN org will make a decision regarding the proposed Amendment 3 to the .COM Registry Agreement and the proposed binding LOI between ICANN and Verisign.

**Section II: Background**

ICANN and Verisign entered into the current .COM Registry Agreement (RA) for the operation of the .COM top-level domain (TLD) on 1 December 2012 with a term of six years. In October 2016, ICANN org and Verisign agreed to Amendment No. 1 of the .COM Registry Agreement, which extended the then-current term of the Registry Agreement to 30 November 2024 (Amendment 1).

In addition to the RA between ICANN and Verisign, the U.S. Department of Commerce's (DOC) and Verisign maintain the Cooperative Agreement for Verisign's operation of the .COM TLD.

The following provision was set forth in Amendment 1 to the .COM RA between Verisign and ICANN:

The parties shall cooperate and negotiate in good faith to amend the terms of the Agreement (a) by the second anniversary of the Amendment Effective Date, to preserve and enhance the security and stability of the Internet or the TLD, and (b) as may be necessary for consistency with changes to, or the termination or expiration of, the Cooperative Agreement between Registry Operator and the Department of Commerce.

Amendment 1 was negotiated in parallel with the creation of the Root Zone Maintainer Service Agreement (RZMA) between ICANN and Verisign, which was a key element of the transition of the stewardship of the IANA functions from the DOC to ICANN, which was completed in 2016. The extension of the term of the .COM RA provided in Amendment 1 was set to match the term of the newly created RZMA contract between ICANN and Verisign. This was intended to maintain stable, secure, and reliable operations of the root zone not only for direct root zone management service customers (registry operators, registrars and root server operators), but also to maintain the security and stability of the Internet's domain name system. For more information, see ICANN's blog from 28 June 2016: https://www.icann.org/news/blog/root-zone-management-transition-update-preservation-of-security-stability-and-resiliency.

**Section III: Relevant Resources**

- Proposed Amendment 3 to the .COM Registry Agreement
- Proposed binding Letter of Intent between ICANN and Verisign

**Section IV: Additional Information**
Section V: Reports

FINAL VERSION SUBMITTED (IF RATIFIED)

The final version to be submitted, if the draft is ratified, will be placed here by upon completion of the vote.

An “At-Large Valentine”, regarding the Proposed Amendment 3 to the .COM Registry Agreement, written in good faith and good humor, was submitted to the ICANN Board on 13 February 2020.

Jonathan Zuck, ALAC Vice Chair for Policy and CPWG Co-Chair, drafted the letter on behalf of At-Large. ALAC Members and At-Large community members reviewed and approved the letter during the CPWG meeting on Wednesday, 12 February 2020.

FINAL DRAFT VERSION TO BE VOTED UPON BY THE ALAC

The final draft version to be voted upon by the ALAC will be placed here before the vote is to begin.
DRAFT SUBMITTED FOR DISCUSSION

The first draft submitted will be placed here before the call for comments begins. The Draft should be preceded by the name of the person submitting the draft and the date/time. If, during the discussion, the draft is revised, the older version(s) should be left in place and the new version along with a header line identifying the drafter and date/time should be placed above the older version(s), separated by a Horizontal Rule (available + Insert More Content control).