



GoDaddy Comment on Proposed Amendment 3 to the .COM Registry Agreement

GoDaddy appreciates the opportunity to comment on the Proposed Amendment 3 to the .COM Registry Agreement. Our mission at GoDaddy is to empower entrepreneurs everywhere, making opportunities more inclusive for all. Key to meeting this mission is predictability in the domain name industry when it comes to the wholesale pricing of domains, as well as the process through which material changes to Registry Agreements (including Registry-Registrar Agreements) are made, as these significantly and substantially alter the competitive landscape. A cornerstone to ICANN and governance of the domain name industry is transparency; fair, deliberate, and predictable processes for community engagement; and accountability. This cornerstone is what all stakeholders, including GoDaddy and our customers, have learned to expect and rely on in terms of launching and operating a successful business.

GoDaddy's comments below focus on the above themes and ask ICANN to provide for 1) an economic/market analysis prior to increasing .COM pricing; 2) a competitive analysis prior to permitting vertical integration; 3) greater detail on the subjects addressed in the Letter of Intent; 4) greater transparency in and improvements to ICANN's processes associated with RA amendments; and 5) meaningful opportunities for community input.

.COM Pricing and the Need for Economic Study

GoDaddy would like to echo much of what was said in the Registrar Stakeholder Group's response to the proposed renewals of the .ORG, .INFO, and .BIZ registry agreements, the comments of which are applicable to .COM if not more so.¹ As noted in their response, a healthy domain name marketplace dictates appropriate pricing based on competition and end-user demand. However, the TLD marketplace is unique with provisions like presumptive-renewal of registry agreements and a lack of competitive bidding. Fundamentally, our belief is that ICANN is required to be both careful and rigorous in its management of this market. We believe that any changes to the current balance must not be considered without thorough study of the potential impact on competition. While the new gTLD registries are facing a significantly new world of competition, this is not true for legacy gTLDs, particularly .COM. From an end user's perspective, Verisign's .COM does not have natural competitors to constrain retail pricing within the market.

GoDaddy believes that ICANN has agreed to a framework for wholesale price increases in .COM that will negatively impact current and future registrants of .COM

¹ See: "The Registrar Stakeholder Group's Response to the Proposed Renewals of the .ORG, .INFO and .BIZ Registry Agreements," 29 April 2019, at <https://mm.icann.org/pipermail/comments-info-renewal-18mar19/attachments/20190430/11faa379/Responseto.Org.Info.BIZRenewalAgreementsv21.pdf>.

domain names, as well as the overall domain name industry, which is disproportionately dependent and impacted by changes in .COM pricing. We are further concerned that there is no effective competition to assist in establishing what is a reasonable price for .COM. Before ICANN agrees to price increases for .COM, GoDaddy asks ICANN to conduct an independent economic study of the domain name market and the effectiveness of competition on legacy gTLD pricing levels. The study should be conducted and considered prior to the first increased pricing year. Further, such a study should also take into consideration whether competition can effectively constrain prices should it ever be considered to remove price caps on .COM.

Performing such a study is consistent with ICANN's obligations under its Bylaws and is consistent with the September 2018 recommendations of the Competition, Consumer Choice, and Consumer Trust Review Team (CCT-RT). As the burden for an increase on .COM ultimately falls on the registrant, we believe it is incumbent on ICANN to ensure that any decisions made are based on relevant data and that any price increases have been duly considered with the entire community's best interests in mind.

Vertical Integration – Need for a Competitive Analysis

GoDaddy recognizes that the National Telecommunications and Information Administration (NTIA) clarified in their amendment 35 to the Cooperative Agreement with Verisign "that the restrictions on Verisign's ownership of any ICANN-accredited registrar(s) were, and remain, intended to apply solely to the .COM registry and therefore Verisign and ICANN may agree to amend the .COM Registry Agreement to clarify its terms..."² ICANN proposes in its amendment 3 to the .COM RA to make this clarification, thus not preventing Verisign from owning a registrar for TLDs outside of .COM.

GoDaddy opposes making this amendment to the .COM RA until a competitive analysis is first made to determine whether Verisign can leverage their position as the registry of the most valued domain to unfairly bolster any venture into the registrar business space. Verisign has and continues to have advantages not available to other domain name players, whether registries or registrars, and a competitive analysis is necessary to ensure that a hasty decision to permit Verisign to vertically integrate is not at the unfair expense of existing market players.

Letter of Intent – Need for Additional Detail

While GoDaddy applauds ICANN for looking to find new ways to enhance the security and stability of the DNS, we are concerned with the Letter of Intent (LOI) as it involves a considerable sum of money exchanging hands with no real details provided as to how this money will be allocated and ultimately accounted for.

Specifically, with respect to the USD \$20 million that Verisign will pay ICANN "for costs incurred by ICANN in conducting, facilitating or supporting activities that preserve and enhance the security, stability, and resiliency of the DNS..." GoDaddy is very concerned that there is no transparency or oversight on how this money will be allocated. Arguably, an LOI with Verisign does not necessitate such detail. However, this is the only documented information that the ICANN community has, at least to

² See "Amendment to Financial Assistance Award," pg 4, at: https://www.ntia.doc.gov/files/ntia/publications/amendment_35.pdf.

date, with respect to a considerable monetary contribution from Verisign that is exalted as contributing towards the betterment of the DNS (and not the betterment of ICANN).

Further, the commitment by Verisign to work with ICANN and the ICANN community on best practices appears well intentioned principally, but there lacks any detail with respect to how such activity(ies) will be conducted and the requisite expectations of the community.

In light of these concerns, ICANN must inform the community on the details of this transaction and resultant programs prior to sending the LOI to Verisign. Such action is necessary to ensure the integrity of ICANN and the interests of the DNS and the ICANN community.

Process Concerns: Lack of Transparency and Meaningful Opportunity for Community Input

In addition to the LOI, GoDaddy has other concerns relating to the transparency of the .COM RA Amendment process, as well as a total absence of community consultations by ICANN that inform that process. The crux of the issue is that there is no documented or consistent process for handling these amendments. This is unacceptable and demands urgent reform. GoDaddy urges ICANN to document and make publicly available its process for making amendments. ICANN should also take this opportunity to make improvements on past practice.

Firstly, ICANN should build in an opportunity for the community to provide input *in advance* of ICANN negotiating with Verisign. Such input is necessary if ICANN is going to be able to adequately negotiate and have a realistic understanding of the scope of community concerns.

Secondly, ICANN needs to re-evaluate how it is taking into account community feedback received in its existing public consultation processes. There have been recent examples, including the renewal of the .ORG Registry Agreement, where concerns raised by the community were demonstrably not reflected in ICANN's decisions, concerns which were later substantiated. There are many in the community who believe that ICANN's public consultations are nothing more than a check-the-box activity, which whether real or perceived, draws into question not only the public consultation process, but the integrity of ICANN and its processes overall. While it is understandable that not every comment can be taken fully into account, there is clearly room for improvement in how ICANN takes input into consideration. GoDaddy recommends that ICANN evaluate this and, at a minimum, articulate to the community the method in which input is currently taken into account and how it intends to make improvement.

Conclusion

Once again, GoDaddy thanks ICANN for this opportunity to comment on the Proposed Amendment 3 to the .COM Registry Agreement. We recognize that much of the process by which ICANN and Verisign engage in negotiating the amendments is based on long standing practice that has never been formally documented. That being said, GoDaddy believes that now is the time to consider improvements to the .COM Registry Agreement amendment process to include timely independent analysis on competition in the domain name industry, more transparency, and meaningful consideration of community input. Such improvements need to be formally and publicly documented. These actions will work to strengthen the integrity of the process, set community expectations, and better guide ICANN in its negotiations with Verisign. We further ask that, prior to making changes to .COM pricing, permitting Verisign to vertically integrate, and moving forward with the LOI, that ICANN conduct requisite market and competitive

analysis as well as make more details publicly available as necessitated for this process to be truly transparent.