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IPC COMMENTS ON PROPOSED AMENDMENT 3 TO VERISIGN .COM REGISTRY AGREEMENT

The Intellectual Property Constituency (“IPC”) appreciates the opportunity to comment on the proposed “Third Amendment to the .com Registry Agreement” (“Amendment 3”) and proposed binding Letter of Intent (“LOI”).

EXECUTIVE SUMMARY

The IPC applauds ICANN and Verisign for including a number of the Public Interest Commitments (“PICs”) of Specification 11 of the Registry Agreement for new gTLDs (“Specification 11”), commitments to implement RDAP, and the required updated Registry-Registrar Agreement as part of Amendment 3. These threshold steps are important not only for placing the legacy gTLD of .com on more equal footing with the new gTLDs, but also for recognizing the responsibilities that all registries, including Verisign, should undertake to discourage and combat abuse on their TLDs. The IPC recommends that other provisions of Specification 11 not yet included also be incorporated into Amendment 3.

The IPC also views the LOI as a positive step forward, but respectfully suggests that the definition and focus of DNS Abuse in the LOI is too narrow. Finally, given the high levels of DNS abuse on .com, the IPC encourages Verisign and ICANN to undertake more substantive and cooperative efforts to address ongoing issues of abuse.

The IPC strongly reiterates its long-standing support of intellectual property rights protection mechanisms (RPMs) and hopes that the full range of RPMs will be adopted by Verisign.

SPECIFIC IPC COMMENTS

Public Interest Commitments

The IPC strongly supports the proposed incorporation of two PICS into Amendment 3. We note that the first PIC set forth on page 68 of Amendment 3 reads as follows: “a. Registry Operator will ensure that there is a provision in its Registry-Registrar Agreement that requires registrars to include in their registration agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences *(to be enforced by the applicable registrar in accordance with such registrar’s Registrar Accreditation Agreement)* for such activities, including suspension of the domain name” (emphasis added). The emphasized/italicized language in the second parenthetical is not contained in the parallel PIC provision of Specification 11. We regard the issue of enforcement as critical. It is not sufficient that the agreements merely contain language prohibiting Registered Name Holders from engaging in abuse—that constitutes mere window dressing. Therefore, the IPC enthusiastically endorses the new language referencing enforcement. We suggest that this language may be clearer if it reads as follows:

“a. Registry Operator will ensure that there is a provision in its Registry-Registrar Agreement that requires registrars to include in their registration agreements, **and to enforce**, a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities, including suspension of the domain name.” (emphasis added)

Furthermore, in order to instill greater transparency and public accountability to the .com TLD vis-a-vis the newly added PICS, the IPC strongly recommends adding Specification 11, Sections 3 and 3(c) of Specification 11 to the .com Registry Agreement. More specifically, similar to all new gTLDs, Verisign should agree to abide by the Public Interest Commitment Dispute Resolution Process (PICDRP) by adopting Section 3 of Specification 11. Without the PICDRP, interested members of the public, including members of the IPC and other intellectual property rightsholders, must depend entirely upon the ICANN contractual compliance department to enforce all PICs added to the .com Registry Agreement. Similarly, to safeguard against predatory registry practices as pricing constraints are loosened for the .com TLD, Verisign should agree to abide by general principles of transparency, openness and non-discrimination by adopting Section 3(c) of Specification 11.

Statement on DNS Abuse

While the IPC appreciates and supports that the proposed Amendment 3 and LOI address the issue of DNS abuse, the IPC believes that the proposed Amendment 3 and LOI must implement stronger steps against DNS abuse. Abusive and illegal activity on the internet is a significant and growing problem, and a very significant percentage of these activities occur through .com domains.

For example, 59.5% of child sexual abuse webpages identified by the Internet Watch Foundation were found on .com domains in 2017.¹ From 2015-2016, 40% of the top 500 film and television piracy websites identified by the Motion Picture Association of America operated on .com websites. And the 2017 Phishing Trends & Intelligence Report noted that 49% of phishing sites were located on .com domains.² With the present proposal of Amendment 3, ICANN and Verisign have the opportunity to implement more meaningful and substantive measures to combat DNS abuse.

Thick Whois

With respect to Paragraph 8 of Amendment 3, the IPC encourages that Verisign be required to maintain thick Whois like other registries. Currently, nearly all other registries operate with thick Whois, while .com (along with .net and .jobs, also operated by Verisign) are the only registries that operate with thin Whois. Although the IPC acknowledges that the ICANN Board of Directors in its November 7, 2019 Resolution (Resolution 2019.11.07.13) granted a fifth deferral of the compliance enforcement of the Thick Whois Transition Policy, we view the current Amendment 3 to the .com Registry Agreement as a missed opportunity for ICANN to require .com to timely transition to thick Whois. Adopting thick Whois for Verisign's registries will serve as a critically important tool in fighting DNS abuses, such as those detailed in the previous section.

Moreover, periodic security threat analyses required by the new .com PICs would be much more productive and useful if performed using thick rather than thin Whois data. Absent telltale abuse indicators contained within thick Whois data, Verisign will most likely simply be recording and reacting to reports of abuse after they have already transpired and caused damage to intellectual property rightsholders and online consumers. Furthermore, the thin Whois model has long been criticized, including by the Thick Whois PDP, as problematic for security, stability and reliability in domain name transfers. It seems strange to donate millions of dollars toward studying and redressing abuse, while at the same time failing to update the world's largest registry from thin to thick Whois in order to employ a key tool for addressing abuse.

¹ See: https://annualreport.iwf.org.uk/#statistics_and_trends_2017

² See: <https://www.phishlabs.com/phishlabs-2017-phishing-trends-intelligence-report-hacking-the-human/>

Rights Protection Mechanisms

The IPC is disappointed that Verisign has declined to take this particular opportunity to integrate voluntarily the Uniform Rapid Suspension System (“URS”), the Post-Delegation Dispute Resolution Procedure (“PDDRP”) or other new gTLD Rights Protection Mechanisms (“RPMs”) into .com. However, the IPC has consistently identified numerous deficiencies with the URS and shares the desire of other stakeholders in the community to improve the URS through the RPM Review PDP.

The IPC strongly reiterates its long-standing support of intellectual property rights protection mechanisms (RPMs), including Sunrise and priority access periods, that serve to protect IP owners. The IPC invites ICANN and Verisign to demonstrate a strong commitment to protecting IP and consistent enforcement of RPMs in the DNS, including in any release of single letter .com domain names.

Letter of Intent

Under the proposed LOI, Verisign agrees to pay ICANN \$4 million each year for a period of five years (2021 -2025) to address “supporting activities that preserve and enhance the security, stability and resiliency of the DNS, which may include, without limitation, active measures to promote and/or facilitate DNSSEC deployment, Security Threat mitigation, name collision mitigation, root server system governance and research into the operation of the DNS (together, “SSR Activities”).” Under the proposed LOI, Verisign agrees to cooperate with ICANN in taking on a leadership role to address the security, stability, and resiliency of the DNS.

The IPC believes the LOI is too narrow in its definition and scope of SSR activities and obligations and encourages the LOI be amended to reflect a more expansive view of SSR and DNS abuse, including trademark and copyright infringement. For example, the LOI commits Verisign to work with ICANN in developing “best practices” for registry operators to address “Security Threats” where Security Threats are defined as follows: “phishing, malware distribution, and botnet command and control.”

Given the agreement to include the PIC in the proposed Amendment 3 that details prohibited abusive activity by registered name holders, the IPC suggests that this list of abusive behavior be consulted in fashioning and broadening the definition of “Security Threats” in the LOI. Thus, in addition to phishing, malware distribution, and botnet command and control, “Security Threats” should also include: pharming, piracy, trademark or copyright infringement. Moreover, as previously stated, it seems strange to donate millions of dollars toward studying and redressing abuse, while at the same time failing to update the world’s largest registry from thin to thick Whois in order to employ a key tool for addressing abuse.

Proposed Pricing Changes

The IPC does not take a specific position on price increases within the .com TLD beyond the consistent IPC positions that: (1) registries should not be permitted to set domain name prices so low, or give them away for free, so as to enable systemic illegal activity by registrants; and (2) registries should not be allowed to set domain name prices so high as to circumvent RPMs, or engage in predatory targeting of intellectual property rightsholders.

Cooperation Agreement between NTIA and Verisign

In announcing its renewal of the Cooperative Agreement between Verisign and the U.S. government, the NTIA stated: “NTIA looks forward to working with Verisign and other ICANN stakeholders in the coming year on trusted notifier programs to provide transparency and accountability in the .com top level domain.” Despite this statement, the IPC is not aware of any progress by Verisign on trusted notifier arrangements. ICANN should encourage, and as appropriate require, Verisign to engage in trusted notifier arrangements to combat a wide range of DNS abuse, including IP infringement, and it is disappointing that in the pending amendment to the .com registry agreement ICANN has not taken the opportunity to do so. The IPC notes that the registries and registrars who published the Framework to Address DNS Abuse in October 2019 embraced the concept and implementation of trusted notifier arrangements, albeit for abuse that did not include IP infringement. We urge Verisign to follow the lead of these registries and registrars that are manifesting their willingness to step up to the challenge of pro-actively combatting abuse.

Respectfully submitted,

Intellectual Property Constituency