

RrSG response to Proposed Amendment 3 to the .COM Registry Agreement

<https://www.icann.org/public-comments/com-amendment-3-2020-01-03-en>

Public Comment Period closes: 14 February 2020

The Registrar Stakeholder Group (RrSG) welcomes the opportunity to provide a comment on the Proposed Amendment 3 to .COM Registry Agreement (RA).

The RrSG has a number of serious concerns concerning price increase, vertical integration issue, an additional \$20 million payment from Verisign to ICANN, and the overall amendment process.

With a market share of 73% of all gTLD registrations and 40% of all domain name registrations (including ccTLDs), .COM continues to be by far the most dominant TLD in the domain name space and of great interest to the RrSG. The handling of any amendment to the .COM Registry Agreement justifiably requires particular attention and prudence. As the RrSG commented when the .ORG, .INFO & .BIZ registry agreements proposed removing price caps in 2019:

In theory, a healthy domain name marketplace dictates appropriate pricing based on competition and end-user demand. However, the TLD marketplace is unique in its structure with things like presumptive-renewal and price caps. Fundamentally, our belief is that ICANN is required to be both careful and rigorous in its management of this market and competition within it.

[...]

Before agreeing to remove any pricing restrictions for ... gTLDs like .COM, the RrSG requests that ICANN conduct an economic study of whether competition can effectively constrain prices. 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 such an increase 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.¹

Although ICANN org declined to act upon the RrSG request then, the RrSG reiterates this request now in light of the substantial impact to the DNS ecosystem the changes envisioned by the Proposed Amendment 3.

The RrSG is concerned that the proposed price increases are without sufficient justification or an analysis of its potentially substantial impact on the DNS. ICANN has not explained how increased domain name prices are in the public interest or how this furthers the security and stability of the DNS. The price increases appear only to benefit one company, which has the right to operate .com in perpetuity (and without a competitive bidding process). This is inconsistent with ICANN's bottom-up multi-stakeholder model.

Furthermore, the RrSG has concerns that the Proposed Amendment (in addition to price increases for four out of every six years) allows for additional price increases for extraordinary expenses. This

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<https://mm.icann.org/pipermail/comments-info-renewal-18mar19/attachments/20190430/11faa379/ResponseTo.Org.Info.BIZRenewalAgreementsv21.pdf>

includes implementing Consensus Policies, which is a concern because this should be a part of operating the .COM TLD. Further clarification is required relating to how the scheduled increases and the “extraordinary” increases can be timed. As written “Pricing Year” is October 26 to October 25; this makes it possible for two price increases in the same calendar year- potentially even weeks apart. That would lead to instability and negative customer/registrar experiences. The RrSG suggests adding stipulations preventing multiple price increases in a calendar year.

ICANN and Verisign agreed in 2016 to cap prices at \$7.85 through 2024. ICANN has not provided any explanation or justification for why this arrangement must be changed now.

The RrSG would like to highlight the proposed changes to Section 7.1(c). Until now, Verisign was barred from operating a registrar. Under the proposed amendment, this prohibition is lifted with the stipulation that they may not have a controlling or greater than 15% interest in a registrar accredited in the .COM TLD. This is a concern for the RrSG. Verisign would be able to leverage its significant market share in .COM to be a registrar for all other TLDs- and nothing in the amendment prevents Verisign from reselling .COM domains via another registrar. In theory, Verisign could resell .COM domain names at or below cost and still profit from the wholesale .COM price. Additionally, Verisign already has the opportunity to be vertically integrated through its control of the .WEB TLD (the acquisition of which generated its own controversy). Allowing a legacy TLD operator with the size of .COM to enter the registrar sector unfettered could encourage anti-competitive behavior. If there is a change to allow for vertical integration, the burden is on ICANN to justify why this is necessary and how it aligns with ICANN’s founding principles to foster competition and consumer choice.

The RrSG is concerned over insufficient transparency regarding the \$20 million payment from Verisign to ICANN (to be made over 5 years in \$4 million installments). This payment is stated as being earmarked “to support ICANN’s initiatives to preserve and enhance the security, stability, and resiliency of the DNS”. However, without community oversight, how will ICANN be able to account for these funds? Without such oversight, this gives the payment a questionable appearance, as well as the risk that the funds would simply be used to support the general operating budget of ICANN. As such, the RrSG requests ICANN community oversight of the use of these extraordinary funds.

Finally, the RrSG is concerned that ICANN did not consult with the community prior to the negotiation of this amendment. Significant and substantial changes to a registry agreement that will have long term and far-reaching impact on the Internet should occur only after consultation with the ICANN community. Because ICANN did not do so, it is not clear that ICANN negotiated the Proposed Amendment with the interests of the community ahead of those of Verisign or ICANN org. The RrSG is concerned that this Proposed Amendment will become a final amendment without incorporating feedback from the ICANN community (which will likely propose significant changes to the Proposed Amendment).

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