

## **TurnCommerce, Inc. d/b/a NameBright Proposed Amendment 3 to the .COM Registry Agreement**

February, 14, 2020

TurnCommerce, Inc. d/b/a NameBright, an ICANN accredited domain registrar, submits this comment to the proposed Amendment 3 to the .COM Registry Agreement. The ICANN Board of Directors should decline to approve this premature and unnecessary amendment that benefits only ICANN and Verisign at the expense of the stakeholders—including more than 144 million current registrants—that ICANN is supposed to represent.

### **1. ICANN's Basis for the Amendment is Flawed**

In its description of Amendment 3, ICANN explains that Amendment 1 of the Registry Agreement provides that the parties shall cooperate and negotiate in good faith to amend the agreement as necessary to (1) reflect changes to Verisign's Cooperative Agreement with the U.S. Department of Commerce and (2) preserve and enhance the security and stability of the Internet or the .com domain.

Until recently, the fee Verisign was allowed to charge for .com domain registrations was capped at \$7.85 by the Cooperative Agreement. Amendment 35 to the Cooperative Agreement removed this permanent price cap and, instead, allows Verisign to seek to increase the price by 7% in each of the last four of every six-year period in the Registry Agreement.

The mere fact that Amendment 35 allows Verisign to raise .com registration prices does not create an obligation on the part of ICANN to agree to any price increase. ICANN has no such duty and, in fact, it has a duty to its stakeholders to resist any increase in price. As further explained below, even the current price for .com registrations is supracompetitive and consumers would pay significantly lower prices for .com registrations if it were not for ICANN's decision to allow Verisign to perpetually operate the .com registry under an automatically renewing no-bid contract.

In fact, ICANN's proposed acquiescence to Verisign's demands for a price increase to the maximum extent allowed by the U.S. Government only proves that ICANN has utterly failed in its duty to represent the interests of its stakeholders and ensure robust competition in the management of Internet names and addresses. It is ICANN's duty to regulate and supervise the operation of the .com Registry, including the prices that the registry operator may charge, and to carry out those duties in the public interest. Amendment 3 is a breach of these duties.

### **2. Amendment 3 is Inconsistent with ICANN's Mission and Legal Duties**

ICANN's self-described mission is to ensure the security and stability of the internet and to promote competition, which developed from its obligations under its Memorandum of Understanding with the U.S. Department of Commerce. ICANN agreed to abide by the following four principles: stability, competition, bottom-up coordination, and multi-stakeholder representation.

With the proposed Amendment 3, ICANN has once again eschewed its commitment to the latter three of these principles, unnecessarily sacrificing them in the name of stability. This sacrifice is unnecessary because ICANN can ensure a secure and stable DNS without agreeing to raise the prices consumers pay for .com registrations.

Amendment 3 is the symptom of a larger problem: Verisign's perpetual, no-bid contract to operate the .com registry. If ICANN is to meet its obligations, it must abandon this anticompetitive arrangement and require competitive bidding.

### **3. ICANN Must Implement Competitive Bidding for the .com Registry**

ICANN's proposed Amendment 3 continues down the wrong path, one in which Verisign has a presumptive, indeed automatic, right to renew the registry agreement. ICANN has attempted to justify this anticompetitive arrangement because, it has inaccurately argued, that a change in registry operators could be disruptive and a registry operator without a presumptive right to renew would have fewer incentives to invest in the TLD. These arguments have no basis in reality and are belied by ICANN's history and market principles. Indeed, the U.S. Department of Justice Antitrust Division has forcefully rejected these arguments:

Opponents of competitive bidding on renewals have contended that ICANN needs to grant perpetual registry contracts in order to motivate registry operators to invest in their registries. However, incumbent registry operators have an incentive to make investments in order to maintain their competitive advantage in a rebid situation. Thus, the effect of innovation of potential termination of a registry agreement *is at worst inconclusive*. [emphasis added] Further, experience demonstrates that any concern about the risk of transferring a new gTLD registry after a rebid is misplaced. Management and operation of many gTLDs and ccTLDs have been successfully transferred without imposing undue burdens on the DNS stability or security. For example, VeriSign successfully transferred the .org registry to the Public Interest Registry in January 2003.

There is simply no legitimate argument that competition for registry contracts—especially the largest registry contract—is bad for the domain name system or for consumers. Without the prospect of competitive pressure, Verisign has no incentive to be efficient, innovative, and effective. In the time that Verisign has operated the registry, prices have increased, we believe innovation has stalled, while Verisign's operating costs have apparently declined.

To the contrary, registries are extremely profitable, and there are plenty of capable providers who would gladly compete for the right to operate the .com registry. Every time that a registry operator has faced competition for a registry contract, lower prices have resulted. In 2005, for example, Verisign faced competitive bidding for the .net registry agreement. To ensure it maintained its position as the .net registry operator, Verisign was forced to submit a bid that was 30% lower than its then-current registration price under the prior contract.

We also know that if the .com registry went out to bid, prices would decrease. Multiple registry operators have publicly stated they could perform the same level of service as Verisign in operating the .com registry at a fraction of the price: Tucows, for example, has stated it could manage the registry for less than \$3 per registration.

Verisign could, too. The marginal cost of each new registration is effectively zero, and the number of .com registrations has nearly quadrupled since 2004.

Therefore, we believe no price increase is warranted. That is because the number of registrations grows every day, while Verisign's registry operations are entirely automated; it need not do any additional work or provide any expanded services to continue growing both its revenues and profits.

In fact, these numbers demonstrate that the price of .com registrations should be lower in a competitive marketplace. There is certainly no basis for ICANN to allow Verisign to increase prices.

#### **4. Verisign Already Agreed to Maintain Its Current Price Through 2024**

ICANN and Verisign already negotiated the price of .com registrations through 2024, and there is no good reason why ICANN should agree to a price change more than four years early. The only explanation for ICANN's agreement is the \$20 million kickback it will receive for violating its duty to its stakeholders in a secret, backroom deal it negotiated with Verisign.

#### **5. Allowing a Monopolist to Vertically Integrate is Not in the Public Interest**

In the early 2000s, the U.S. Government broke up Network Solutions and split out the registry and registrar functions to address competition issues that resulted from a vertically integrated monopoly. The restrictions were put in place for good reason: allowing the sole supplier of .com domains to offer services at the retail level can and likely will result in abuses. ICANN has an obligation to ensure robust competition in the Domain Name System; by walking back on this significant process, ICANN will once again fail to live up to the fundamental principles of its mandate.

### **CONCLUSION**

Amendment 3 is a symptom of a larger problem: ICANN handed Verisign a perpetual, no-bid contract that removes market discipline that would ensure lower prices and greater innovation and investment in the .com registry. If Verisign were subject to competition for the contract at the end of every term, it would not seek to raise prices for registrations—it would be forced to lower them significantly if it desired to keep the contract.

Amendment 3 benefits only ICANN and Verisign. ICANN has a duty to regulate the .com registry in the public interest, but it has failed in that duty. The ICANN Board of Directors should vindicate the stakeholders it is supposed to represent and reject Amendment 3.