

## Comments on VeriSign's Proposal - Release for Registration one .COM Domain Name with a Single-Character Label: O.COM

The idea of releasing Single Character Domain Names (SCDNs) has been floating around for at least a decade. Generally, we have no issue with the concept, as it is now technically feasible to execute and possibly beneficial to both users and registrars.

However, we do have some very serious concerns with Verisign's proposal in its current form.

Specifically, its lack of details, ominous fee structure, potential for abuse, and anti-competitiveness make us strongly urge against it.

This proposal fundamentally changes the way .COM operates and sets a very dangerous precedent.

We firmly believe all .COM domain names should be treated equally, regardless of their value. With more than 133 million .COMs and overwhelming market dominance, it's crucial to protect the core strengths of the .COM Namespace, which have been the standard for decades.

These are:

- Straightforward and transparent pricing
- The same fees for registration and renewal
- The same transfer process for domains
- The same lifecycle of a domain

HOWEVER, Verisign proposes:

- Creating an exception for only 23 domains
- Adding premium renewal pricing
- Creating a totally different expiration process
- Allowing no ability to sell or transfer the domain as an asset
- Restricting access on who can participate in the auction
- Vague legal language which may impact all .COM registrants

This is very bad news for everyone.

Let's look at this in further detail:

### Premium Renewals for .COM domain names

Although the domain renewal process will be handled through the existing registrant/registrar /registry channel, **the winning bidder must pay 5% of the final auction amount in years 6 – 25.**

This means if the winning bid is \$15 million dollars (a good possibility given O.com's desirability) the renewal fee is \$750,000 per year for 20 years, or \$15 million in additional "hidden" fees. By associating the payment of the auction amount to the registration period, this creates a de facto premium renewal fee, as the auction winner is contractually obligated to make primum payments in years 6 – 25 or they will forfeit registration rights. This is a far cry from the standard \$7.95 fee for every other .COM domain mandated by the U.S. Department of Justice & NTIA.

### **Auctioning off .COM domain names is entirely new territory for VeriSign**

There is no reason the very operator of the .COM Namespace should be involved in the auctioning of a domain name. In fact, having an auction is completely outside the scope and function of Verisign's registry responsibilities. It goes against their contractual agreement with both ICANN and the Department of Justice & NTIA.

If an auction process were to be introduced, it should be administered and monitored by ICANN or some neutral third party.

### **The new expiration process**

These 23 SCDNs will not follow the same expiry process as other .COMs, as they only have a 14-day auto-renew period and **absolutely no** redemption grace period, as mandated

This means if the domain is not renewed within 14-days after it expires, VeriSign has the right to:

- A.) delete the registration
- B.) make the domain available through a subsequent auction
- C.) use another allocation method not clearly described

We must ask ourselves: why in the heck are we introducing all of these other complications and additional rules into the .COM Namespace? And what will happen to these .COMs that fall into this void if subsequent auctions fail to generate interest or are challenged in a court of law?

### **SCDNs cannot be transferred to other registrants**

VeriSign will not allow this domain to be transferred to another registrant unless "all or substantially all" assets of the registrant have been acquired. This is an extreme deviation from the normal transfer process. By inserting additional restrictions, this severely limits the pool of people who may participate in this auction.

All other domains can be purchased, sold, traded, rented and leased. Denying a registrant the right to sell a domain asset and transfer it to another registrant is definitely NOT in the public best interest for the .COM Namespace.

Think about this for a second – all other .COM domains can be transferred to other registrants through the normal transfer process. But VeriSign is proposing 23 SCDNs will not be transferable??

We have to preserve and protect the standards and unrestricted nature in which .COM operates.

There is no logical reason to introduce additional complications and rules into the .COM Namespace for a very small subset of domain names

## **Restrictive access to the auction determined by whom?**

In one section of the proposal, VeriSign says:

*The .com domain name registry operates an unrestricted, unsponsored top-level domain and thus, any Internet user anywhere in the world may participate in the auction and compete to register the SCDN in the .com TLD*

But in another section, VeriSign says:

*Auctioneer can “pre-qualify” auction participants and requires “documentation describing the planned marketing and usage of the registered domain name.”*

This means that a supposedly “open” auction now has a screening process, judged by the third-party auctioneer, who is able to make a subjective ruling on who is able to participate based on “planned usage” of the domain name. This is entirely restrictive, and it is up to the chosen auctioneer to decide who can participate. Why does “planned marketing and usage” have any bearing on who can participate in the auction and who can not?

## **VeriSign labels this as a “test”**

This means it is likely VeriSign will make changes to the process for subsequent SCDNs, raising a whole bunch of other questions.

- Who is going to determine if this “test” is successful?
- Based on what criteria?
- How will success be measured?
- Is VeriSign the sole decision maker?
- Who is paying for the legal changes and ICANN’s incurred costs?

While the proceeds of this first “test” auction are designated to go to charity, some have worried that this is VeriSign’s ruse to make drastic changes in policy. Indeed, there is nothing in the proposal to prevent them from pocketing the revenue from future auctions.

## **When will the additional 22 SCDNs be released?**

This radical change in regulation gives no timetable or guidelines for the additional 22 SCDNs. We support the creation of policy that regulates and releases all SCDNs at once.

## **Why has O.com been singled out?**

As I’m sure you are aware, O.com has been on the “want list” for many entities for at least a decade, most notably Overstock.com who filed a trademark in 2005 (coinciding with a PR push to have the domains released).

*It should also be noted that Verisign proposed a similar auction process for SCDNs back in 2010 but after much blowback from the community withdrew the request.*

The singular nature of this request, coupled by the past actions of both Overstock and Verisign makes us wonder if some kind of backdoor dealings have been going on.

**There is already a big legal cloud over O.com and if any other party than Overstock wins the auction, we are certain to see years of litigation.**

Verisign has said this is a test. If so, wouldn't it make more sense to start with a letter that doesn't have all this baggage?

It is our opinion that no one individual or entity can claim rights to SCDNs, as they have broad appeal, are extremely scarce, and the generic nature of alphabet letters date back to the 7th century B.C.

These "trademark" holders, therefore, are making claims to alphabetic letters in the Namespace that are not delegated. There is no technical function or system in place to re-direct internet traffic, because ICANN has not yet permitted the allocation of these domains.

When Overstock claims they have been using O.com in marketing materials and they have demonstrated "use," it is completely false because the URL does not even work.

It is an attempt to game the system, by faking usage, to ultimately grab the prized asset.

**We do not know VeriSign's position on Overstock's trademark.**

When the winning party spends \$15M for O.com in an auction which was ultimately facilitated by VeriSign, what does their liability look like?

Will VeriSign insert legal language for protection/indemnification, thus creating even more red tape around .COM registrations?

This has the potential to set extremely bad precedent. If Verisign is allowed to change the rules at whim, it sidesteps the NTIA, Department of Commerce, and ICANN itself.

The fact that Verisign has limited the number of potential auction participants and that O.com cannot be transferred to another registrant in the traditional process makes us wonder if the fix isn't already in.

**The "auction" is vague and its terms ill-defined.**

It is not established who the auction vendor will be and who will choose them. Will this be left up to Verisign?

It's unclear why the payment terms are for 25 years. Surely, the deep pocketed corporations that will be bidding can pay sooner, likely upfront.

Is this to obfuscate the millions of dollars in fees that will be collected? A charity or charities are the intended recipient of this money, but this too is vaguely defined.

Additionally, the terms of the auction itself are ambiguous.

Will this be a traditional live auction starting with the lowest bids, or a Dutch auction where you start with the highest price and work down? Perhaps it will be a sealed auction where no one knows the other offers.

There are other unique methods (silent auctions, reverse auctions, and senior auctions to name three) that dramatically change the procedures and perhaps the outcome.

For the sake of fairness, if an auction is to be used, it is imperative all the terms be clearly established in the proposal. Verisign has supplied nothing.

**One of ICANN's core mandates is to promote competition:**

To wit:

1.2 (a) (v) Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment (i.e., making an unjustified prejudicial distinction between or among different parties).

**Yet they have abused their mandate in the past – with Verisign.**

It's important to remember that Verisign has put pressure on ICANN before, essentially forcing them to capitulate to their demands. In 2003, Verisign unveiled their SiteFinder service, which gave them control over misspelled and non-existent domain names. After public outcry, ICANN demanded Verisign stop the practice, but Verisign sued saying ICANN was out of its jurisdiction.

To avoid costly litigation, ICANN forged an agreement in secret: Verisign would drop the lawsuit, pay millions to ICANN in fines, and be granted a **monopoly on the .COM domain**.

**This agreement also let ICANN and Verisign regularly increase registration fees, pocketing further profits.**

Today, Verisign has reaped billions in profits from the .COM TLD with no competition (more than \$700 million in 2017 alone).

Is this new legislation a similar sweetheart deal?

**USPTO has been extremely inconsistent in the granting of trademarks to SCDNs.**

The USPTO had rejected hundreds of these applications over the years, but it seems the older ones did not face much scrutiny and were quickly approved. (O.com being one of the more notorious.) Thus, the USPTO has not established good ground rules.

In summary, we should ponder the long-term impact of this proposal, especially considering VeriSign operates the no-bid, presumptive right of renewal .COM contract with large operating margins.

Introducing new functionality to the .COM Namespace fundamentally changes the way in which .COM operates as it creates 23 domains that will become "exceptions to the rule" without any reasonable rationale. This will lead to more confusion among both registrars and registrants.

We also fundamentally believe in equal treatment – we believe all .COM domains should be treated equal across the board, no matter how valuable or rare they may be.

Therefore, we urge ICANN reject this proposal in its current form. ICANN should consider alternative ways to release SCDN's without introducing any new restrictions or functionality onto .COM domain names. Let's work hard to preserve the .COM Namespace for Internet users worldwide.

If ICANN fails to understand the significance of what is being proposed and fails to take action, this is yet another reason why the NTIA must play a greater role in Internet Policy development process.

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Don Smith / on Behalf of Domain Name Investors