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**VIA E-MAIL**

ICANN  
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comments-com-amendment-3-03jan20@icann.org

**Re: Proposed Amendment 3 to the .COM Registry Agreement and Binding Letter of Intent between ICANN and Verisign**

Dear ICANN:

I hereby submit the following comments on the Proposed Amendment 3 to the .COM Registry Agreement (the “**Amendment**”) and the binding Letter of Intent (“**LOI**”) between ICANN and VeriSign, Inc. (“**Verisign**”). These comments are based on my extensive experience as counsel to clients that operate in the domain name system (“**DNS**”),<sup>1</sup> and as an informed member of the Internet community.

The contents of both the Amendment and binding LOI posted by ICANN for public comment on 3 January 2020 raise significant concerns. As the organization in charge of “ensur[ing] the stable and secure operation of the Internet’s unique identifier systems,”<sup>2</sup> ICANN has certain obligations towards the Internet community. Two of ICANN’s most important obligations are to operate “for the benefit of the Internet community as a whole” and to “enable competition and open entry in Internet-related markets.”<sup>3</sup> Neither the

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<sup>1</sup> Counsel at Dechert LLP previously has represented ICM Registry, LLC in the first full Independent Review Process (“**IRP**”) against ICANN, as well as several other claimants in proceedings against ICANN—such as Dot Registry LLC, DotConnectAfrica Trust, Amazon.com, Employ Media LLC, and Afiliis Domains No. 3 Limited. Counsel has also advised a number of registries and registrars on ICANN processes, such as dotgay LLC and DotMusic Limited, and helped several develop their dispute resolution policies.

<sup>2</sup> ICANN Bylaws (amended 28 Nov. 2019), Art. 1, § 1.1(a), *available at* (<https://go.icann.org/2SrvI6>) (hereinafter, “**Bylaws**”).

<sup>3</sup> Bylaws, Art. 1, § 1.2(a).

Amendment nor the LOI support these obligations. Rather, the Amendment and the LOI will only strengthen Verisign's dominance of the DNS at the expense of other market participants.

I therefore feel compelled to submit this comment for ICANN's consideration,<sup>4</sup> well knowing that ICANN might give far less "weight" to my comments than those of its supporting organizations, its advisory committees, and even Verisign itself.<sup>5</sup> As explained further below, Verisign presently dominates the DNS, and the proposal would vastly strengthen Verisign's power (**Section 1**). Worse yet, the Amendment contains several troubling revisions to the .COM Registry Agreement that will benefit *only* Verisign, and are being granted to Verisign for no discernable reason (**Section 2**). And, in fact, the revisions contained in the Amendment and LOI raise significant concerns about ICANN's cozy relationship with Verisign (**Section 3**).

## **1. The Proposed Amendment and LOI Will Exacerbate Verisign's Already Anti-Competitive Dominance of the DNS**

Without question, the .COM generic top-level domain ("gTLD") currently is the most recognized and sought after gTLD in the DNS. The public generally associates owning a commercial website with owning a ".COM" domain name—the world, after all,

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<sup>4</sup> ICANN's recent treatment of the public comment process for the amendments to the .ORG Registry Agreement suggests that ICANN likely has already decided to implement both the Amendment and LOI without consideration of the public comments received through this process. See "First quarter 2019 Archives by date" ICANN (2 May 2019), available at (<https://go.icann.org/2OzUIva>); "Second quarter 2019 Archives by date" ICANN (29 May 2019), available at (<https://go.icann.org/371qpUN>) (listing over 3,000 public comments protesting the removal of price controls in the .ORG Registry Agreement). Cf. *Paulsen v. Daniels*, 413 F.3d 999, 1005 (9th Cir. 2005) ("It is antithetical to the structure and purpose of the APA for an agency to implement a rule first, and then seek comment later."). ICANN's apparent disregard for public comments violates both its Articles of Incorporation and Bylaws.

<sup>5</sup> ICANN's former General Manager of Public Participation, Kieren McCarthy, has acknowledged publicly that, at least in the past, where "a comment period gains wide awareness" and generates a large amount of public comments, ICANN has utilized "some kind of weighting system" to ensure that only the "more considered" comments "are given the necessary consideration." ICM Registry, "A Summary and Analysis of ICANN's Public Comment Period on Dot-XXX", Circle ID (18 May 2010), available at (<https://bit.ly/2OKh9hu>). Under that model, the "ICANN Supporting Organizations and Advisory Committees" and "[a]ffected parties"—here, Verisign—are considered the "highest weighted response[s]," whereas "[i]ndividual members of the public" are weighted less. *Id.*

experienced a .COM boom and not a .NET boom or a .ORG boom. There are over **144 million** registered .COM domain names presently in the DNS, which is over **118.9 million more** registrations than the second largest reported domain in the DNS: .TK.<sup>6</sup> And, despite ICANN's New gTLD Program, the amount of domain name registrations for .COM continues to **increase** on a yearly basis.<sup>7</sup>

As the registry for the .COM gTLD, Verisign undeniably dominates the DNS. As Members of the United States Senate have observed:

Because of Verisign's exclusive control of the .com registry—a responsibility that benefitted an arrangement between ICANN and the NTIA—American businesses and consumers with an interest in registering or renewing a .com domain name have had no meaningful competitive alternatives within the .com registry marketplace. In effect, Verisign's government-approved control of the .com registry allows it to operate as a monopoly—a fact that has not gone unnoticed in the financial services industry and the stock market.[<sup>8</sup>]

Financial analysts who have studied the company agree, describing Verisign as having “a virtual monopoly on Internet domains” that gives it “unrivalled power” in “the fastest-growing industry in the world—the Internet.”<sup>9</sup> Industry observers have likewise concluded that Verisign “holds a legal monopoly on the DNS industry” and that “VeriSign's exclusive contract with [ICANN] gives the company a significant barrier to entry for competitors.”<sup>10</sup>

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<sup>6</sup> Verisign, “The Domain Name Industry Brief” Vol. 16, Issue 4 (Dec. 2019), p. 2, *available at* (<https://bit.ly/375O2eA>) (noting that there are only 25.1 million domain name registrations for the .TK domain) (hereinafter, “**Industry Brief**”).

<sup>7</sup> *Id.* (“The .com and .net TLDs had a combined increase of 5.7 million domain name registrations, or 3.8 percent, year over year.”).

<sup>8</sup> Letter from Senators T. Cruz, M. Lee, and S. Duffy (United States Senate) to R. Hesse (Acting Assistant Attorney General, United States Department of Justice) (12 Aug. 2016), p. 2, *available at* (<https://bit.ly/2Uw6TwX>) (paragraph break omitted).

<sup>9</sup> Marshall Hargrave, “Profit from a ‘Monopoly on the Internet’ with 45% Upside” StreetAuthority (6 Nov. 2013), *available at* (<https://yhoo.it/31vDNiC>).

<sup>10</sup> Brian Katz, “VeriSign Is Brian Katz's Highest Conviction Holding – Here's Why” Seeking Alpha (29 Dec. 2009); “Verisign: Time to Make Some Real Money” Seeking Alpha (29 Jun. 2016).

Verisign’s market power is so significant that the United States Department of Commerce (“**DOC**”) specifically imposed a price cap on the price of .COM registrations to protect the public interest through its Cooperative Agreement with Verisign (the “**Cooperative Agreement**”).<sup>11</sup> The DOC remained so concerned about Verisign that it maintained “sufficient oversight [over the .COM Registry Agreement] by retaining the Department’s approval authority for changes to the .com Registry Agreement” even *after* the United States Government handed ICANN control of the IANA functions and stepped away from oversight of the DNS in 2016.<sup>12</sup> As evidenced by the DOC’s treatment of the .COM Registry Agreement, Verisign’s dominance of the DNS as the .COM registry must be checked by ICANN in order to restrain Verisign’s already troubling monopoly power. Like the DOC and in accordance with its duties to the public, ICANN should be ensuring that Verisign does not abuse its position or gain even-greater power in the DNS.

However, by agreeing to the Amendment and LOI, ICANN not only has failed as the regulator of the DNS but also has shirked one of its fundamental duties: the promotion and protection of competition in the DNS. The Memorandum of Understanding between the DOC and ICANN, which officially recognized that ICANN would oversee the DNS, explains that ICANN was incorporated to privatize management of the DNS “in a manner that *increases* competition.”<sup>13</sup> Underlying this obligation was the need to break the monopoly that Network Solutions, Inc.—the former .COM registry and Verisign’s predecessor—had over the DNS. Becky Burr, the first Chairman of the ICANN Board, even testified before the United States Senate that ICANN’s “primary mission was to break

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<sup>11</sup> Verisign, “Verisign Statement on .com Registry Agreement Renewal” (1 Nov. 2012), *available at* (<https://bit.ly/2H0E5oj>) (“This price increase structure, among other restrictions, was negotiated with the Justice Department in order to cap Verisign’s ability to increase prices, a structure deemed then by the Commerce Department to be in the public interest.”); Department of Commerce, “Amendment to Financial Assistance Award” (29 Nov. 2012), *available at* (<https://bit.ly/2OzV05e>) (“This agreement is hereby amended to . . . cap the price of .com registrations at \$7.85 and allow VeriSign to take price increases only upon prior written approval of the Department . . .”).

<sup>12</sup> Special Award Conditions NCR-92-18742 Amendment Thirty-Five (35) (26 Oct. 2018), p. 1, *available at* (<https://bit.ly/386xk03>) (hereinafter, “**Amendment 35**”).

<sup>13</sup> Memorandum of Understanding Between the U.S. Department of Commerce and Internet Corporation for Assigned Names and Numbers (25 Nov. 1998), Section II.A., *available at* (<https://go.icann.org/387r73Y>) (emphasis added).

the monopoly of Network Solutions.”<sup>14</sup> But Verisign’s dominance has exponentially eclipsed DNS’ market power, and the proposed Amendment and LOI would only accelerate that troubling trend.

The importance of competition in the DNS to ICANN is evident. ICANN’s Bylaws and Articles both affirm that ICANN will operate “for the benefit of the Internet community . . . through open and transparent processes that enable competition and open entry in Internet-related markets.”<sup>15</sup> ICANN has repeatedly claimed it is dedicated to “promot[ing] competition” in the DNS, specifically for registry services.<sup>16</sup> ICANN must therefore “manage the Internet [DNS] in a manner that permits market mechanisms to support competition and consumer choice so that lower costs are realized, innovation is promoted, and user choice and satisfaction are enhanced.”<sup>17</sup>

But instead of restricting Verisign’s influence over the DNS, ICANN’s proposed Amendment and LOI will only help Verisign cement and expand its monopoly.

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<sup>14</sup> ICANN’s Expansion of Top Level Domains, Hearing before the Committee on Commerce, Science, and Transportation, S. Hrg. 112-394, Testimony of Esther Dyson (8 Dec. 2011), *available at* (<https://bit.ly/2Srt9W2>).

<sup>15</sup> Amended and Restated Articles of Incorporation of Internet Corporation for Assigned Names and Numbers (3 Oct. 2016), Art. 3, *available at* (<https://go.icann.org/387weB9>); Bylaws, Art. 1, § 1.2(a).

<sup>16</sup> Bylaws, Art. 1, § 1.2(b)(iv) (“In performing its mission, the following ‘Core Values’ should guide the decisions and actions of ICANN . . . [which include] [i]ntroducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest . . . .”); “What Does ICANN Do?” ICANN (25 Feb. 2012), *available at* (<https://go.icann.org/2tGDIGc>); “Competition, Consumer Trust and Consumer Choice Review,” ICANN (last visited 13 Feb. 2020), *available at* (<https://go.icann.org/2H0EuqP>) (“ICANN is committed to ensuring that it will adequately address issues of competition . . . .”); Paul Twomey, “The Future of the Internet” ICANN (9 May 2007), p. 4, *available at* (<https://go.icann.org/2OyUVi9>) (identifying a principle of operation as “[p]romote competition and choice for registrants and other users”).

<sup>17</sup> Letter to Peter Dengate-Thrush, ICANN Chairman, from Meredith A. Baker, Acting Assistant Secretary for Communications and Information (18 Dec. 2008), p. 1, *available at* (<https://go.icann.org/2H7r0tf>).

## 2. The Amendment Contains Several Problematic Revisions to the .COM Registry Agreement

The Amendment's removal<sup>18</sup> of price caps on Verisign's operation of the .COM gTLD are therefore both unprecedented and inexplicable. There is no possible reason to believe that granting Verisign unilateral authority to raise the prices it charges for its .COM registry services on a yearly basis with absolutely no oversight by ICANN will increase competition or benefit the Internet community. In fact, it is guaranteed to have the opposite result.

Amended Section 7.3(d)(ii) grants Verisign unilateral discretion to "increase the Maximum Price" for Registry Services annually by 7% from 2020 to 2023, and then perpetually in the final four years of every six year period following (*i.e.*, again annually from 2026 to 2029, and so on).<sup>19</sup> Additionally, for any year in which Verisign does not raise prices purely as a matter of course, it still may raise prices by 7% to cover "incremental" costs and expenses incurred from actual or threatened attacks on the security or stability of the DNS.<sup>20</sup> As discussed below, these price increases are not necessary, are not justified, and will not benefit anyone in the Internet community other than Verisign.

*First*, ICANN suggests in its public description of the Amendment that ICANN is somehow "obligat[ed]" to "align[]" the terms of its own Registry Agreement with Verisign with the Cooperative Agreement—and, more specifically, that ICANN is required to align the Amendment's terms with the "maximum pricing provision for registry services" articulated in Amendment 35 to the Cooperative Agreement.<sup>21</sup> But Amendment 35 did not prescribe or mandate a price increase. Rather, Amendment 35 merely *permits* Verisign

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<sup>18</sup> Although the Amendment only permits Verisign to increase the price for the .COM gTLD each year during the last four years of each six year period, in practice this will remove the price cap on the .COM gTLD, as there is no maximum limitation on these price increases. See "Third Amendment to the .COM Registry Agreement Proposed Draft – Subject to Approval" ICANN (3 Jan. 2020), pp. 6–7, available at (<https://go.icann.org/375ODwQ>) (hereinafter, "**Amendment**").

<sup>19</sup> *Id.*, ¶ 17, § 7.3(d)(ii). We expect that the .COM Registry Agreement between Verisign and ICANN will be renewed in 2024. First Amendment to .COM Registry Agreement (20 Oct. 2016), p. 1, available at (<https://go.icann.org/386xFzR>).

<sup>20</sup> Amendment, ¶ 17, § 7.3(d)(iii).

<sup>21</sup> See "Proposed Amendment 3 to the .COM Registry Agreement," ICANN (last visited 13 Feb. 2020), available at (<https://go.icann.org/31zoGVG>).

and ICANN to “agree to amend Section 7.3(d)(i) (Maximum Price),” while setting limits on their ability to do so and removing the prior pricing restrictions imposed by Amendment 32 to the Cooperative Agreement.<sup>22</sup> Nowhere does Amendment 35 *require* ICANN and Verisign to increase the prices for .COM registry services, let alone raise them to the maximum amount permitted by Amendment 35.

*Second*, any price increase is unnecessary and entirely unwarranted. Nothing about the nature or circumstances of Verisign’s .COM registry services necessitates a yearly price increase. Rather, Verisign’s revenue continues to *increase* on a yearly basis,<sup>23</sup> and its operating margin exceeds 60%—among the highest of any S&P 500 company.<sup>24</sup> By contrast, Verisign’s yearly costs and expenses have *decreased* over the past decade.<sup>25</sup> And the Amendment does not require Verisign to provide any justification for its price increases, even in light of Verisign’s continually decreasing costs. At bottom, there has been no change to the DNS, generally, or the circumstances surrounding Verisign’s management of the .COM gTLD, specifically, that would warrant a price increase, let alone annual price increases instituted at Verisign’s unilateral discretion.

*Third*, in the years Verisign does not raise prices pursuant to new Section 7.3(d)(ii), it may still raise prices by 7% so long as it does so because it purportedly incurred “incremental”

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<sup>22</sup> Amendment 35, ¶ 2.

<sup>23</sup> “Verisign Reports Third Quarter 2019 Results” Verisign (24 Oct. 2019), *available at* (<https://bit.ly/2H1Di6D>) (reporting “revenue of \$308 million for the third quarter of 2019, up 0.9 percent from the same quarter in 2018”).

<sup>24</sup> D. Dayen, “Special Investigation: The Dirty Secret Behind Warren Buffett’s Billions,” *The Nation*, *available at* (<https://bit.ly/39cxbsa>) (last visited on 13 Feb. 2020), p. 10 (“But in the third quarter of 2017, Verisign’s operating income as a percentage of revenue hit 61.9 percent, putting it near the top of all companies in the S&P 500.”). If its margins continue to grow at the current rate, within the next decade Verisign will “post the highest rate of profitability of any public company on earth.” *Id.*

<sup>25</sup> *See* 2018 Form 10-K, Verisign, Inc. (15 Feb. 2019), p. 28, *available at* (<https://bit.ly/2OB4QF>); 2017 Form 10-K, Verisign, Inc. (16 Feb. 2018), p. 30, *available at* (<https://bit.ly/386xXGX>); 2016 Form 10-K, Verisign, Inc. (17 Feb. 2017), p. 29, *available at* (<https://bit.ly/2Uwxnyd>); 2015 Form 10-K, Verisign, Inc. (19 Feb. 2016), p. 28, *available at* (<https://bit.ly/2OzQEvb>); 2014 Form 10-K, Verisign, Inc. (13 Feb. 2015), p. 38 *available at* (<https://bit.ly/3bs8Hx8>); 2013 Form 10-K, Verisign, Inc. (21 Feb. 2014), p. 39, *available at* (<https://bit.ly/2H3EAy4>); 2012 Form 10-K, Verisign, Inc. (28 Feb. 2013), p. 33, *available at* (<https://bit.ly/2Uy1yW2>); 2011 Form 10-K, Verisign, Inc. (24 Feb. 2012), p. 38, *available at* (<https://bit.ly/2GY4L9l>).

costs and expenses “resulting from an attack or threat of attack on the Security or Stability of the DNS.”<sup>26</sup> But the Amendment sets no standards for what constitutes a requisite “attack or threat of attack on the Security or Stability of the DNS.” Nor does the Amendment require Verisign to identify the requisite “attack or threat of attack” prompting the price increase. Nor does it even require that Verisign explain or provide justification for the claimed “incremental” costs and expenses supposedly warranting the 7% price increase. Rather, the Amendment effectively authorizes the imposition of annual and perpetual price increases for Verisign’s registry services for the most popular, valuable, and important gTLD in the world.

*Finally*, the evergreen price increases authorized by the Amendment will have long-lasting and devastating consequences for the Internet community. Hundreds of millions of domain name registrants will suffer. Domestic and international businesses, non-profit and charitable organizations, religious institutions, humanitarian groups, and individual persons alike will pay more (and then more and then even more) for their .COM domain names, year after year, while Verisign’s profits surge. Even worse, perpetual price increases like those permitted in the Amendment risk creating a cost-prohibitive barrier to the .COM gTLD, eliminating access to the world’s most important gTLD to those who cannot afford to pay the price of admission.

### **3. The Amendment Raises Several Concerns Regarding ICANN’s Relationship with Verisign**

These concerns are yet another in a series of blows to ICANN’s public trust. The Internet community has rightly been concerned about the nature of ICANN’s relationship with Verisign for years now. As described above, Verisign’s control over the .COM gTLD gives it significant market power and leverage. Because of its legacy status and first-mover effects, .COM remains by far the most popular gTLD; it likely will continue to dominate the market for decades to come. And because Verisign’s domination of this critical resource will renew automatically for the foreseeable future, Verisign’s actions should be subject to heightened scrutiny. Instead, the proposed Amendment and accompanying LOI perversely grant Verisign *more* power with *less* oversight. The only rational explanation for this inexplicable proposal is that ICANN’s and Verisign’s relationship is far too

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<sup>26</sup> Amendment, ¶ 17, § 7.3(d)(iii).



familiar, and has resulted in an arrangement where ICANN and Verisign profit themselves at the expense of the public.

ICANN's responsibility is to the Internet community and public as a whole, not to Verisign. When it first took command of the DNS, ICANN appeared to take that responsibility seriously. When Verisign began to abuse its control of .COM by unilaterally implementing SiteFinder, ICANN stepped in and insisted that Verisign suspend the service.<sup>27</sup> Verisign struck back. After a heated series of legal complaints that showcased Verisign's power, ICANN granted Verisign one of the most lopsided settlement agreements imaginable: a contractual right-to-renewal of the most valuable gTLD, the ability to raise prices on that gTLD, and license to operate almost purely for profit without any need to invest in research or development. In return, ICANN obtained cash in the form of Verisign's promise to increase its payments to ICANN.

Thus began years of ICANN treating Verisign not with the oversight and scrutiny that should accompany the .COM registry, but with the deference and docility that one would expect from business partners. For years afterwards, Verisign negotiated price increases for .COM domains every chance it could. In 2012, ICANN was poised to allow further price increases—again in exchange for increased payments from Verisign—before the United States Government intervened and capped the price on .COM registries.

ICANN's tolerance of Verisign's efforts to increase its profits from the .COM domain extends to Verisign's clear efforts to circumvent and even re-write ICANN policies and procedures—further confirming the hand-in-glove nature of their relationship. In 2016, ICANN turned a blind eye as Verisign secretly attempted to secure the rights to the .WEB gTLD, the only new gTLD that can likely compete with .COM, by indirectly and improperly participating in the .WEB auction through a straw purchaser. In 2018, a senior Verisign employee and the chair of the committee in charge of drafting procedures for ICANN's Independent Review Process (“**IRP**”) (the IRP-Implementation Oversight Team) used his position to influence the amendment of the procedures to include specific language that would allow Verisign to participate in an IRP contesting *ICANN's actions*

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<sup>27</sup> “Advisory Concerning Demand to Remove VeriSign's Wildcard” ICANN (3 Oct. 2003), *available at* (<https://go.icann.org/2H0FoDJ>). SiteFinder was a “wildcard” service that “create[d] a registry-synthesized address record in response to lookups of domains that are not otherwise present in the zone.” *Id.* The service “redirect[ed] traffic that would otherwise have resulted in a ‘no domain’ response to a VeriSign-operated website with links to alternative choices and to a search engine.” *Id.*

in response to the .WEB auction. That new language now controls the only process designed to hold ICANN accountable, and exists purely for Verisign's benefit. Yet, ICANN not only assisted in drafting this language but also has defended Verisign's manipulation of ICANN's rule-making processes.

At bottom, the proposed Amendment and accompanying LOI put a spotlight on several aspects of the ICANN-Verisign relationship that should concern all members of the Internet community, and call into question whether ICANN truly still acts for the benefit of the Internet community as a whole and not only its most powerful member.

*First*, ICANN once again is allowing Verisign to raise registry prices on .COM in exchange for payments from Verisign. As the LOI makes clear, Verisign has committed to pay ICANN USD 20 million over a five-year period, allegedly to support “the security, stability and resilience of the DNS.”<sup>28</sup> Yet ICANN has for years worked to preserve the security and stability of the DNS. So far as the public knows, nothing has changed regarding ICANN's work on this matter that would necessitate an extra USD 20 million. This begs the question, made only more obvious in light of ICANN and Verisign's history: Why is Verisign really paying ICANN USD 20 million?

Relatedly, the proposed Amendment reveals that Verisign will now pay ICANN an extra fee any time the registration term on a domain is extended.<sup>29</sup> And though the proposed USD 0.25 fee may not seem like much, Verisign would be paying these potential fees on over 144 million registered .COM domains indefinitely—the potential boon to ICANN is therefore enormous. The Internet community deserves to know ICANN's true motivations for lifting the price caps on .COM in exchange for such payments from Verisign.

*Second*, the LOI contains language that appears only to further cement ICANN and Verisign's relationship and hold them out as partners. For example, the LOI states that “ICANN *and Verisign*” will take “a leadership role in combating Security Threats”; “ICANN *and Verisign*” will somehow jointly “determine the appropriate process for, and development and implementation of, ‘best practices’ related to combating Security

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<sup>28</sup> “Letter of Intent Proposed Draft – Subject to Approval” ICANN (3 Jan. 2020), ¶ 2, available at (<https://go.icann.org/3bj4prK>) (hereinafter, “LOI”).

<sup>29</sup> Amendment, ¶ 16. ICANN does not expect such payments from any other registry. See “Base Registry Agreement” ICANN (31 July 2017), § 6.1, available at (<https://go.icann.org/31DOu2L>).

Threats”; and both “ICANN *and Verisign*” will “work with the ICANN community,” “educate the wider ICANN community,” and “demonstrate their support” for preserving the DNS.<sup>30</sup> Obviously, ICANN’s mission is to preserve the DNS, and work for the benefit of the Internet community as a whole. But Verisign has no such mission, and is only one of the many for-profit corporations that make up the Internet community. The LOI thus raises serious questions as to why this one particular stakeholder has been elevated to a quasi-partnership with ICANN, taking the helm alongside ICANN to educate the rest of the community and combat security threats.

*Third*, all of these issues and concerns are made only worse by the fact that ICANN and Verisign negotiated these critical agreements behind closed doors and announced their package without prior input from anyone. These agreements obviously affect the wider Internet community, but the public has had only a chance to comment on the final result. And if the recent .ORG fiasco is any indication, ICANN will likely adopt the proposed Amendment and LOI regardless of what anyone else has to say. Taken as a whole, the proposed Amendment and LOI, and the way they were proposed, raise serious questions as to whether ICANN has upheld its obligation of transparency and duty to operate for the benefit of the Internet community as a whole.<sup>31</sup>

I therefore urge ICANN to reject both the Amendment and LOI as they are presently drafted. In order to act for the public benefit and protect competition in the DNS, ICANN must not further strengthen Verisign’s position as the .COM registry.

ICANN has been conferred with a unique responsibility and duty of care to manage and regulate a global resource. It must do so transparently, fairly and in accordance with one of ICANN’s core principles—promoting competition.

Sincerely,



Arif Hyder Ali, Partner

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<sup>30</sup> LOI, p. 1 (emphasis added).

<sup>31</sup> Bylaws, Art. 1, § 1.2(a); Art. 1, § 1.2(b)(ii).