

First Place Internet, Inc. respectfully opposes Amendment 3 to the .com Registry Agreement (RA), and makes further observations and recommendations as noted:

1. Amendment 3, along with its fee structure, represents a fundamental conflict of interest for ICANN. ICANN is the body charged with overseeing registry operators such as Verisign, and is in a position to approve or not approve requested changes to RAs. In this instance, ICANN has negotiated itself a cut of a fee increase approved for Verisign by the U.S. Department of Commerce, and has done so under the implicit threat of withholding approval of Amendment 3. The very appearance of such impropriety is intrinsically wrong.
2. The fee increase itself in Amendment 3 has been promoted under the guise of “security and stability of the Internet”. Of course this is a popular cause. It is also a false choice, however. Because money is fungible, new funds directed to one cause (such as security and stability) can free up funds for other purposes—say, executive compensation, or travel and entertainment expenses for ICANN conferences. This is a fairly old ruse.
  - a. ICANN’s benefit in this instance has been valued at \$20 million<sup>1</sup>.
  - b. The public should be braced for ICANN’s response to criticism of this; in the case of ICANN giving .org registry PIR price control relief, ICANN perversely told thousands of legitimate commenters that their opposition was all “spam”.<sup>2</sup>
3. Unfortunately, the Amendment 3 structure continues a disturbing pattern of complicity between protected organizations charged with running the Internet infrastructure and/or fostering the public interest. Besides ICANN itself, these entities include registry operators such as Verisign and PIR, and owners thereof, e.g., the Internet Society (ISOC). As with Amendment 3, this complicity involves taking advantage of monopoly pricing power and lifting price caps, on both normal registrations and premium domain names. This is to the detriment of the public, and often particularly to intellectual property owners.
  - a. ICANN is currently under State of California Attorney General investigation for possible self-dealing related to the .org Registry sale from ISOC to Ethos Capital. That investigation was spurred after ICANN first gave registry operator (PIR) price control relief for .org registrations, as referenced in 2 (b) above.<sup>3,4,5,6,7,8,9,10,11,12</sup>
  - b. ICANN Consensus Policy expressly prohibits registries and registrars from warehousing or speculating in domain names.<sup>13</sup> In addition to removing price caps on .org domain registrations, ICANN removed any restriction preventing PIR from self-registering previously reserved .org single character domain names (SCDNs), selling them at premium prices, and keeping the proceeds.

- c. Also despite this Consensus Policy, on 3/27/19 ICANN posted Amendment 2 to the .com RA identifying ISOC as an O.com auction beneficiary.<sup>14</sup> This information was later redacted from the public record for no apparent reason, presumably other than it didn't look very good. This may further explain why ICANN denied its own Intellectual Property Constituency (IPC) recommendation that Rights Protection Mechanisms (RPMs), specifically Trademark Clearinghouse (TMCH), be enforced when releasing reserved .com SCDNs, including O.com.<sup>15</sup>
4. Protecting and restoring RPMs denied by ICANN may require U.S. Government oversight, because ICANN is not effectively self-governing as much as it is self-dealing.
- a. ICANN self-dealing worsened after IANA was transferred to ICANN on September 30<sup>th</sup>, 2016, possibly because ICANN falsely assumed it acquired all Intellectual Property rights to SCDNs and to the .org Registry from the U.S. Government in that agreement. It did not.<sup>16</sup>
  - b. ICANN is a U.S. nonprofit company that owns no rights to SCDNs or any premium domain name, or to the .org Registry. ICANN holds no legitimate rights to take SCDNs, or to monetize the .org registry for itself or related parties.
  - c. Foreign influence over ICANN Internet governance poses a national security threat greater than companies such as Huawei, and ICANN has violated public trust and ceded its credible authority.

#### References:

- <sup>1</sup>[https://www.theregister.co.uk/2020/01/07/icann\\_verisign\\_fees/](https://www.theregister.co.uk/2020/01/07/icann_verisign_fees/)
- <sup>2</sup><https://www.internetcommerce.org/wp-content/uploads/2019/09/Letter-to-ICANN-Ombudsman-September-12-2019.pdf>
- <sup>3</sup>[https://www.theregister.co.uk/2019/11/20/org\\_registry\\_sale\\_shambles/](https://www.theregister.co.uk/2019/11/20/org_registry_sale_shambles/)
- <sup>4</sup>[https://www.theregister.co.uk/2019/11/26/org\\_selloff\\_internet/](https://www.theregister.co.uk/2019/11/26/org_selloff_internet/)
- <sup>5</sup>[https://www.theregister.co.uk/2019/11/27/isoc\\_icann\\_dot\\_org\\_vint\\_cerf/](https://www.theregister.co.uk/2019/11/27/isoc_icann_dot_org_vint_cerf/)
- <sup>6</sup>[https://www.theregister.co.uk/2019/11/29/isoc\\_ceo\\_dot\\_org\\_sale/](https://www.theregister.co.uk/2019/11/29/isoc_ceo_dot_org_sale/)
- <sup>7</sup>[https://www.theregister.co.uk/2019/12/03/internet\\_society\\_org/](https://www.theregister.co.uk/2019/12/03/internet_society_org/)
- <sup>8</sup>[https://www.theregister.co.uk/2019/12/11/icann\\_transparency\\_org/](https://www.theregister.co.uk/2019/12/11/icann_transparency_org/)
- <sup>9</sup>[https://www.theregister.co.uk/2019/12/17/icann\\_org\\_purchase/](https://www.theregister.co.uk/2019/12/17/icann_org_purchase/)
- <sup>10</sup>[https://www.theregister.co.uk/2020/01/14/icann\\_org\\_redacted/](https://www.theregister.co.uk/2020/01/14/icann_org_redacted/)
- <sup>11</sup>[https://www.theregister.co.uk/2020/01/21/org\\_sale\\_fiasco/](https://www.theregister.co.uk/2020/01/21/org_sale_fiasco/)
- <sup>12</sup>[https://www.theregister.co.uk/2020/02/05/internet\\_society\\_org\\_sale/](https://www.theregister.co.uk/2020/02/05/internet_society_org_sale/)
- <sup>13</sup><https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en>
- <sup>14</sup><https://www.icann.org/sites/default/files/tlds/com/com-amend-2-pdf-27mar19-en.pdf>
- <sup>15</sup><https://mm.icann.org/pipermail/comments-o-com-single-char-10may18/2018q2/000022.html>
- <sup>16</sup><https://pti.icann.org/agreements>