



Etienne Sanz de Acedo  
Chief Executive Officer

675 Third Avenue, 3rd Floor, New York, NY 10017-5704, USA  
t: +1-212-642-1776 | f: +1-212-768-7796  
inta.org | esanzdeacedo@inta.org

Submitted to: comments-com-amendment-3-03jan20@icann.org

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Cyrus Namazi  
President, Global Domains Division  
ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536

**Re: Proposed Amendment 3 to the .COM Registry Agreement**

Dear Mr. Namazi:

The International Trademark Association ("INTA") appreciates this opportunity to comment on the Proposed Amendment 3 to the .COM Registry Agreement (the "Proposed Amendment") published by ICANN Org ("ICANN") on January 3, 2020.<sup>1</sup>

*Thin vs. Thick WHOIS Transition*

The Proposed Amendment allows Verisign to provide registration data as relevant to its type of registration data collection model, which at this time is classified as "thin". However, per the community consensus Thick WHOIS Transition Policy for .COM, .NET, and .JOBS, adopted by the Board on February 1, 2017,<sup>2</sup> the .COM registry should be required to complete the transition from a "thin" to a "thick" registry, and conform to the Registration Data Directory Service ("RDS") requirements of other registries, nearly all of which are already operating as "thick" registries.

INTA recognizes that the ICANN Board has deferred the implementation of Thick WHOIS until three conditions are met.<sup>3</sup> However, INTA remains of the opinion that the .COM registry should not be permitted to remain a thin registry while nearly all other registry operators adhere to thick RDS requirements. This is particularly so in light of the recommendations of the Expedited Policy Development Process Phase 1 that were adopted by the Board on May 15, 2019.<sup>4</sup> Again, there is no clear reason why the .COM registry should be permitted to continue operating as a thin registry despite purported data protection law compliance concerns, given that all other gTLD registries already operate as "thick" registries (aside from .NET and .JOBS, which were also the subject of the Thick WHOIS Transition Policy and should also be required to complete the transition from thin to thick registries without further delay). Otherwise, these thin registries retain an unfair market advantage over thick registries and disadvantage legitimate users of the

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<sup>1</sup> See <https://www.icann.org/public-comments/com-amendment-3-2020-01-03-en>.

<sup>2</sup> See <https://www.icann.org/resources/pages/thick-whois-transition-policy-2017-02-01-en>.

<sup>3</sup> See <https://www.icann.org/resources/board-material/resolutions-2019-11-07-en#1.i>.

<sup>4</sup> See <https://www.icann.org/resources/board-material/resolutions-2019-05-15-en#1.b>.

RDS, including trademark owners – which is particularly important in the .COM registry, being by far the largest and most popular gTLD registry.

#### *Registration Data Access Protocol (RDAP)*

The Proposed Amendment also provides for a process by which ICANN and Verisign will open separate negotiations regarding the implementation of RDAP to replace the current WHOIS protocol. To the extent these terms of the Proposed Amendment afford Verisign preferable treatment vis-à-vis the substantive requirements or timeframe for implementation of RDAP as compared to other registries, INTA strongly opposes such treatment. Verisign should be required to implement RDAP as a replacement to the WHOIS protocol consistently with the RDAP implementation requirements and timeline of other registries. It is not clear why Verisign should not be subject to the same RDAP implementation requirements as other registries (in terms of substance and timeframe), and any preferable treatment affords Verisign an unfair market advantage with respect to these requirements. It may also stymie the full and effective use of RDAP/RDS by legitimate users of RDS, including trademark owners, where RDAP should be used to effectuate RDS access pursuant to a final consensus policy on gTLD domain name registration data.

#### *Public Interest Commitments (PICS)*

INTA strongly supports the inclusion of PICs as part of the Proposed Amendment. These PICs are an important step in ensuring that registries and registrars take more meaningful measures to prevent and combat abuses in the domain name system, including, most importantly for INTA and its members, trademark infringement and related activity. Integrating these PICs into the .COM registry agreement is a long-awaited update to put the .COM registry on equal ground with other registries that already adhere to these PICs.

INTA hopes to engage in other community discussions regarding how to further enhance these PICs to make even more meaningful in terms of registry and registrar accountability and responsibility for protecting the domain name ecosystem from abuses.

#### *Rights Protection Mechanisms (RPMs)*

INTA notes that the Proposed Amendment does not include any updates to the RPMs provided by Verisign in connection with its administration of the .COM registry. As you know, many legacy gTLD operators have already voluntarily adopted additional RPMs, notably the Uniform Rapid Suspension System (URS), to complement the UDRP already applicable to all gTLDs. INTA supports (and has long supported)<sup>5</sup> the adoption of such RPMs by all legacy gTLD

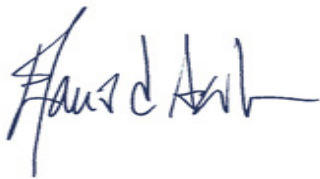
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<sup>5</sup> See, e.g., [https://mm.icann.org/pipermail/comments-museum-renewal-24aug17/attachments/20171003/0ef5821a/INTACommentdotMuseumrenewalOct\\_3\\_2017FINAL.pdf](https://mm.icann.org/pipermail/comments-museum-renewal-24aug17/attachments/20171003/0ef5821a/INTACommentdotMuseumrenewalOct_3_2017FINAL.pdf) (.MUSEUM); <https://forum.icann.org/lists/comments-tel-renewal-04aug16/pdfuda8JEfz7p.pdf> (.TEL); <https://forum.icann.org/lists/comments-mobi-renewal-23dec16/pdfWtLI5HxLkl.pdf> (.MOBI); <https://mm.icann.org/pipermail/comments-org-renewal-18mar19/attachments/20190429/10d2d5d7/INTADotOrgRenewalComments29Apr.pdf> (.ORG); <https://mm.icann.org/pipermail/comments-info-renewal-18mar19/attachments/20190429/e0ce2970/INTADotInfoRenewalComments29Apr.pdf> (.INFO); <https://mm.icann.org/pipermail/comments-biz-renewal-03apr19/attachments/20190514/438e3ff9/INTADotBizRenewalCommentsMay14FINAL-0001.pdf> (.BIZ).

operators, to enhance the overall availability of such RPMs to brand owners (especially in popular legacy gTLDs, like .COM) as well as to again ensure that all gTLD registries are operating on an equal playing field in the marketplace, for the benefit of all consumers. Accordingly, INTA would strongly encourage the parties to voluntarily integrate the URS into the Proposed Amendment. That said, INTA recognizes that the question of whether the URS (and potentially other new gTLD RPMs) should become ICANN consensus policies implemented on a mandatory basis by all legacy gTLD registry operators is an open question to be definitively answered by the ongoing Policy Development Process to Review All RPMs in All gTLDs.

If you have any questions or concerns about INTA's positions on these matters, you may contact Lori Schulman, Senior Director, Internet Policy at [lschulman@inta.org](mailto:lschulman@inta.org). We appreciate ICANN's consideration of these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Etienne Sanz de Acedo".

Etienne Sanz de Acedo  
Chief Executive Officer

#### **About INTA and the Internet Committee**

INTA is a 142-year-old global not for profit association with more than 7,200-member organizations from over 187 countries. One of INTA's goals is the promotion and protection of trademarks as a primary means for consumers to make informed choices regarding the products and services they purchase. During the last decade, INTA has also been the leading voice of trademark owners within the Internet Community, serving as one of the founding members of the Intellectual Property Constituency (IPC). INTA's Internet Committee is a group of over 175 trademark owners and professionals from around the world charged with evaluating treaties, laws, regulations and procedures relating to domain name assignment, use of trademarks on the Internet, and unfair competition on the Internet, whose mission is to advance the balanced protection of trademarks on the Internet.