

Namecheap's Comment on the Proposed Amendment 3 to the .COM Registry Agreement

Namecheap, Inc. (Namecheap) is a leading domain name registration and web hosting company, and the third largest ICANN-accredited registrar with over 10 million domain names under management. Namecheap welcomes the opportunity to provide a comment on this important matter as it will impact every Internet user. This comment is submitted with the hope that ICANN org will do more than just consider it and the other comments, and actually use the public comments to modify Proposed Amendment 3 to align with the overwhelming and unified opinion of the ICANN community.

Incorporating feedback from the vast majority of the ICANN community is essential for maintaining the integrity of ICANN's multi-stakeholder model. Failure to do so will show that ICANN org will use the multi-stakeholder model when it fits ICANN staff's whimsy, but not when a broad cross-section of the community is universally aligned against ICANN staff's unilateral decisions that will significantly harm the community.

1. ICANN is allowing .com prices to rise by 70% in the next decade

Verisign will be allowed to increase the wholesale price to registrars for .com domains by 7% each year in 2020, 2021, 2022, and 2023. After a two year "freeze", Verisign can increase prices by 7% annually during 2026-2029, then another two year "freeze". This cycle will continue, so that within 10 years, .com domains could cost approximately 70% more than the current wholesale price of \$7.85- and this cycle will continue in perpetuity. The .com registry is well-established, so due to gained efficiencies, the cost of .com domain names should remain static or go down.

It is not clear how much registrars will pass these price increases along to consumers, but it is likely that most of this increase will be paid for by domain name registrants. The contract does allow for other price increases for certain extraordinary situations, so it is possible prices could increase more than anticipated.

2. The size of Verisign necessitates additional scrutiny

The changes to the .com agreement will have a much bigger impact on the Internet due to the dominance of Verisign and the .com TLD. There are 359.8 million total domain names, of which 144 million are .com – representing 40% of all domain names. With 161.8 million country specific TLDs (ccTLDs), there are 198 million generic TLDs (gTLDs). That means that .com is 73% of gTLD domain names. Verisign also operates the .net TLD (13.4 million domains). Verisign is

the dominant force in domain names- responsible for setting the wholesale price for 79% of all gTLD domain names.¹

Since 2012, the wholesale cost for a .com domain name was capped at \$7.85 for consumer protection. During that time, the number of .com domains increased from 106.2 million² to 144 million³ (an increase of 35%). During this same period, Verisign's net income rose from \$320 million in 2012⁴ to \$612 million in 2019⁵ (an increase of 91%). It is estimated that the cost for Verisign to operate the .com TLD is approximately \$1.00 to \$3.00 per domain name,⁶ with the remaining wholesale price representing a significant profit for Verisign's no-bid contract with ICANN. Consumers would be better protected if ICANN allowed the .com (and other pre-2013 TLD) contracts to proceed to competitive bidding to ensure consumers (rather than corporations) are protected. Absent allowing other entities to bid on the contract to operate the .com TLD, ICANN must ensure that strong consumer safeguards are in place if this monopoly is allowed to continue.

Additionally, ICANN and Verisign agreed in 2016 to keep the wholesale price capped at \$7.85 through 2024.⁷ It is not clear why ICANN is allowing this early amendment, which only benefits a multibillion dollar company and its shareholders, to the detriment of Internet users (including the 144 million .com domain name registrants).

2. Verisign Domain Registrar

When ICANN was created in 1998, one of its biggest priorities was to introduce competition among registrars in the .com, .net, and .org TLDs on a permanent and firmer footing.⁸ This was intended to end the market dominance of one company (Network Solutions, Inc.) in the DNS, and history is now repeating itself- facilitated by ICANN staff.

ICANN originally created rules to introduce competition between domain name registrars, and restrict registry operators from also owning domain name registrars. Although in 2012 ICANN allowed operators of new gTLDs to have domain name registrars, it did not apply to Verisign (or other operators of pre-2013 TLDs). The Proposed Amendment will allow Verisign to operate its own registrar, except for operating as a registrar for .com domain names. The Proposed

¹ All TLD data cited in this paragraph is from The Verisign Domain Name Industry Brief for Q3 2019 (https://www.verisign.com/en_US/domain-names/dnib/index.xhtml)

² <https://www.verisign.com/assets/domain-name-brief-april2013.pdf>

³ https://www.verisign.com/en_US/domain-names/dnib/index.xhtml

⁴ <https://investor.verisign.com/news-releases/news-release-details/verisign-reports-13-percent-year-over-year-revenue-growth-2012>

⁵ <https://www.businesswire.com/news/home/20200206005770/en/Verisign-Reports-Fourth-Quarter-Full-Year-2019>

⁶ http://www.circleid.com/posts/20181112_verisigns_attempt_to_increase_fees_unjustified_despite/

⁷ <https://www.icann.org/sites/default/files/tlds/com/com-amend-1-pdf-20oct16-en.pdf>

⁸ <https://archive.icann.org/en/nsi/icann-raa-04nov99.htm>

Amendment does not, however, prohibit Verisign from acting as a reseller for .com domain names through another registrar.

A very likely scenario is that the company that controls almost 80% of the registrar pricing for gTLDs will compete directly with all domain registrars, maximizing its control of pricing to the detriment of other competing registrars. While this might result in lower prices for consumers, it will reduce competition and choice as registrars are not able to compete with Verisign's registrar. Verisign's registrar could also use its dominant position to charge higher prices to consumers while at the same time raising whole registrar prices for .com domain names. It is also possible that Verisign's registrar, as a reseller for .com, could charge consumers at or below cost. Verisign could continue to profit significantly as a registry from the wholesale price of .com, and put significant pressure on all other registrars that need to charge more than the wholesale cost of .com to operate as a business.

3. This significant change is made without any evidence-based market analysis.

When deciding to remove price caps for .org, .info, and .biz TLDs,⁹ ICANN tenuously relied upon a 2009 preliminary analysis from Professor Dennis W. Carlton. This "analysis" should be properly called "opinion" because it does not cite any evidence such as consumer surveys, market data, or any facts whatsoever. Additionally, the "analysis" only considered price caps for new gTLDs, and in fact referenced price caps in pre-2012 TLDs as a component of the "analysis" (e.g. the "analysis" did not factor removing price caps for legacy TLDs).

ICANN has previously conducted marketplace studies, and it is imperative that such a substantial change to the DNS should only proceed after the completion of an independent and unbiased market analysis based upon evidence and community feedback (following ICANN's established multi-stakeholder model). Examples of previous ICANN market studies applicable to pricing include:

a. Latin American and Caribbean DNS Marketplace Study,¹⁰ which found in part that the price gap between ccTLDs and gTLDs lead to a drop in registrations in .com in the region.

b. The 2016 African Domain Name System Market Study Final Report¹¹ concluded that higher prices for TLDs result in lower registration volumes. Domain name registrants would prefer to register local (e.g. ccTLD) domain names, but use gTLDs due to lower cost. It also found that ccTLDs with the lowest (non-zero) prices had increased registration volume. This analysis can support the position that an increase in .com pricing will result in lower registration volume in

⁹ <https://www.icann.org/en/system/files/files/reconsideration-19-2-namecheap-final-determination-21nov19-en.pdf>

¹⁰ <https://www.icann.org/en/system/files/files/lac-dns-marketplace-study-13mar17-en.pdf>

¹¹ <https://www.icann.org/en/system/files/files/africa-dns-market-study-final-06jun17-en.pdf>

the region- which will only harm a lesser-developed region where ICANN supports initiatives to grow the local domain name industry.¹²

c. ICANN's Phase 2 Global Consumer Research Survey¹³ was an online survey that included (in part) trust levels for various TLDs (of which .com was the highest at 91%). This shows the value of .com, and it would be very easy to create a similar survey to gauge consumer opinions and feedback regarding wholesale prices for .com domains.

Additionally, ICANN's Competition, Consumer Trust, and Consumer Choice Review Team (CCT) Final Report & Recommendations¹⁴ concluded that there was not enough data available to determine the impact of pricing by registries and registrars on competition and requested ICANN to collect this data for further analysis. Without explanation, ICANN org decided there were "questions raised regarding the value of the data,"¹⁵ paused the implementation of these recommendations, and has not indicated when this easily obtainable and vital data will be collected as recommended by the CCT. It is important to note that CCT is mandated by ICANN's bylaws and ICANN org must take action in response to its recommendations.

ICANN's failure by omission to even remotely consider the impact of pricing on the actual consumers of domain names represents a complete failure as the steward of the global Internet. It is evidence that ICANN's concern is more about protecting the large companies that fund ICANN rather than the many millions of domain name registrants- who will directly be harmed by unchecked price increases. Perhaps this is not a concern to ICANN, which will continue to receive funding from its largest source (Verisign) regardless of how much prices increase for consumers.

Of note, an economic analysis of the Proposed Amendment was submitted to ICANN by Greg Rafert (who ICANN hired in the past to conduct analyses on the TLD marketplace), and he concludes "that there is no economic rationale for Verisign to increase prices for .COM and that increased prices will very likely harm consumers"¹⁶ Namecheap recommends that ICANN review Mr. Rafert's analysis in detail, and incorporate that feedback into a further revision of Proposed Amendment 3.

There are additional factors which ICANN must consider when granting these changes to Verisign:

a. Why are the price caps for the .net TLD (also operated by Verisign) being maintained?

¹² <https://www.icann.org/en/system/files/files/africa-strategy-implementation-2012-2017-03may18-en.pdf>

¹³ <https://www.icann.org/news/announcement-2-2016-06-23-en>

¹⁴ <https://www.icann.org/public-comments/cct-final-recs-2018-10-08-en>

¹⁵ <https://www.icann.org/en/system/files/files/resolutions-final-cct-recs-scorecard-01mar19-en.pdf>

¹⁶ <https://mm.icann.org/pipermail/comments-com-amendment-3-03jan20/attachments/20200214/153335a1/RafertResponsetoProposedAmendment3tothe.COMRegistryAgreement-0001.pdf>

- b. What impact will other TLDs operated by Verisign factor into its market share (e.g. .tv, .cc)?
- c. Verisign paid approximately \$135 million (via another entity) to win the auction for the .web TLD. What impact will this TLD have on the current and future DNS?

It would appear that ICANN is simply rubber stamping the deal between the NTIA and Verisign,¹⁷ while simultaneously ignoring the multi-stakeholder bottom-up approach used by ICANN in other areas of DNS responsibility.

4. Verisign's payment of extra \$20 million to ICANN

Concurrent to the proposed changes to the .com registry agreement, Verisign agreed to pay ICANN an additional \$20 million dollars over five years to support ICANN's initiatives regarding the security and stability of the domain name system. The timing of this payment raises questions, and it is easy to understand why some in the ICANN community have described this as a bribe by Verisign. Namecheap requests ICANN to provide more clarity regarding this payment, specifically:

- a. Why did Verisign offer this additional funding to ICANN?
- b. What is the source of this funding from Verisign (e.g. will it be passed along to domain name registrants)?
- c. What specific initiatives does ICANN intend to use these funds?
- d. What type of oversight will there be for these funds?
- e. Will these funds be used for initiatives that ICANN cancelled/deferred due to its recent budget constraints?

Thank you for your time and consideration, and Namecheap looks forward to ICANN making this public comment process meaningful by actually incorporating this and other community feedback into the final version of the Proposed Amendment 3- even if it differs from the opinion of ICANN staff or Verisign. Domain name registrants are the stakeholders that need protection during this amendment process.

Sincerely,

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¹⁷ <https://www.ntia.doc.gov/press-release/2018/ntia-statement-amendment-35-cooperative-agreement-verisign>