

Statement of Tucows Inc.

Verisign/ICANN Settlement Proposal Position & Backgrounder

November 26, 2005

Comments and Inquiries may be directed to:
Ross Rader
Director, Research & Innovation
ross@tucows.com
t. 416.538.5492
c. 416.828.8783

“Examine each question in terms of what is ethically and aesthetically right, as well as what is economically expedient. A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise.”

- Aldo Leopold, 1886 - 1946

Table of Contents

STATEMENT	4
BACKGROUND	6
ABOUT TUCOWS	10

Statement

Tucows Inc. wholly rejects, without limitation, the Verisign/ICANN Settlement Proposal on the basis that;

1. The outcome does not provide sufficient benefits to the internet community that both ICANN and Verisign, in its role as administrator of .com, were intended to serve. While the ICANN staff likely intends to do “good works” with the new funds that this proposal will make available, the overall cost of the settlement far outweigh any anticipated benefits.
2. This agreement permanently delegates .com to Verisign. ICANN has been assigned oversight responsibility of the namespace as a public trust. Until such time as effective competition has been introduced into gTLD namespace all gTLD registry administration contracts, including those stemming from any settlement with Verisign must be constructed as management contracts with a finite term and meaningful termination clauses. The proposal lacks all of these safeguards and ignores existing policy concerning management rights.
3. In addition to this permanent delegation, the ICANN staff proposes to provide Verisign with the capability to increase their prices, without qualification, up to 7% annually. These additional rights are granted in an environment that would otherwise see decreasing prices if competitively managed.
4. The proposal implements a centralized budget funding model solely enacted between the gTLD administrator and ICANN. Acting solely as a collector of the ICANN imposed fees, Verisign has no incentive to provide a check on unbounded growth of the ICANN’s corporate budget. The balance embodied in the current Registrar budget portion approval process must be preserved.

Any arrangement with Verisign needs to preserve the principles of RFC 1591 by explicitly recognizing the limits of the Registry Operator as an administrator acting in the interests of the internet community. Further, the arrangements must include provisions for cancelable administrative contracts of a finite term with the registry operator. The arrangements must also preserve the checks and balance of the existing decentralized funding model, including provisions for the continuance of the Registrar budget portion approval process.

This enumerates only the most important points. The proposal contains an excessive number of problematic concessions including giving Verisign commercial rights in all registry meta-data and releasing Verisign from \$200mm in R&D spending. The list is virtually endless, and wholly unacceptable.

Tucows encourages like-minded parties to make their views known to the ICANN Board of Directors, The United States Department of Commerce, and The United States National Telecommunications Infrastructure Administration, in addition to their own government agencies and representatives.

Submissions may be sent via email to;

ICANN	settlement-comments@icann.org
Carlos Gutierrez, Secretary United States Department of Commerce	cgutierrez@doc.gov
Michael Gallagher, Assistant Secretary, United States National Telecommunications Infrastructure Administration	mgallagher@ntia.doc.gov

Background

In announcing their proposed settlement to the various lawsuits between Verisign and ICANN, the ICANN staff claim to be clearing the way for a *"...new and productive public/private partnership"* between Verisign and ICANN *"...for the benefit of the internet community."*

The notion that this settlement proposal will benefit anyone but the ICANN staff and Verisign Inc. should be rejected.

ICANN's primary responsibility is technical coordination and oversight of the DNS. This includes delegation of management responsibility for generic top level domains (TLDs) to contractors like Verisign (.com and .net), Afilias (.info) and Neulevel (.biz). According to RFC 1591, *"These administrators are performing a public service on behalf of the internet community."*

The relationship between the internet community and the TLD administrators has evolved over the years. For instance, under Network Solutions and the National Science Foundation, the management of .com was initially undertaken under a cost recovery contract. Verisign later assumed administration under a for-profit management contract with ICANN. The evolution has been beneficial for everyone. The internet community enjoys the benefits of a stable infrastructure that has supported the needs of a vibrant internet; ICANN benefits from a steady-stream of revenue from the surcharges it receives on registration revenue from domain registrars; and Verisign receives \$6 every time someone registers, renews or transfers a .com domain name - hundreds of millions of dollars per year.

Despite the apparent "win-win-win", Verisign has historically been unhappy with their role as a gTLD administrator. Stratton Scavos, Verisign's CEO, has taken the position that Verisign can and should be able to cash in on the DNS, *"...DNS (domain name system) response is an obligation we took on when we inherited [the .com administration contract]. But it would be commercially unreasonable for anyone to suggest that we shouldn't be allowed to build incremental services on top of that."*

Verisign's view of .com as a commercial asset puts them directly at odds with the internet's users, ICANN's stakeholders, the principles of the Green and White Papers, RFC 1591 and therefore ICANN the Corporation and the global public interest - which leads us directly to the heart of the litigation in question.

Unfortunately, in attempting to resolve this issue, Verisign's role as a gTLD administrator acting to the benefit of the community seems to have been forgotten. The proposed settlement agreement does not reinforce existing relationships and agreements – it redefines them. The proposal outlines the terms by which Verisign will essentially assume ownership of .com. Verisign will

not be required to periodically renew their agreement, they will gain unprecedented control over pricing increases, the services offered to the community and the manner in which the TLD is operated. Verisign has levered the litigation into a complete renegotiation of their contract and ICANN staff have capitulated.

In exchange for mutual release of the pending lawsuits and guaranteed funding from a single source subject to no checks or balances, ICANN staff intend to give Verisign;

- permanent delegation of the .com gTLD
- a free hand to deploy new services built on the exclusive resource this delegation affords
- almost complete shelter from consensus policies implemented via community-driven processes
- release from a \$200 million Research and Development commitment
- the ability to continuously increase prices in an environment that would otherwise benefit from decreasing prices if run in a competitive market.
- unfettered commercial rights to all metadata generated in association with the operation of the registry.

This proposal amounts to a \$1.5 billion giveaway that proposes to permanently transfer publicly controlled infrastructure to Verisign in order to stabilize ICANN's corporate budget requirements. Where is the benefit to the internet community in all of this?

In the interests of moving past the litigation Tucows could support an extension of the term of Verisign's contract – but not irrevocably and only on an explicit agreement that Verisign is designated only as an administrator of this public resource. It need be made explicit that Verisign doesn't own .com. Further, the community needs to ensure that this agreement is offset against the creation more competition for Verisign. Fixed terms for the administration contracts and predictable pricing structures should be extended to all registry administrators, not just Verisign. Further, ICANN has to clear the path for new administrators that can compete with Verisign for registrations in other TLDs and at regular intervals for the TLD administration contract itself.

While we continue to support ICANN's founding principles, its current structure and the oversight model employed, we in no way support the proposal presented by the ICANN staff. The proposal indicates that the ICANN staff has lost touch with the needs of the community and the value of this extremely important asset. Trading .com to secure ICANN's funding base is not appropriate.

Of substantial concern to Tucows is the clear message that this proposal sends to the global community. By rewarding Verisign in this matter, the ICANN staff is clearly signaling that the United States legal system is now the preferred

mechanism for effecting ICANN policy changes. The outcome will be two-fold; ICANN will have traded one lawsuit for many – there is no shortage of actions being prepared in anticipation of this settlement being implemented – and; the global community will be further alienated by the actions of ICANN’s staff.

There has always been a level of concern outside of the United States related to ICANN. These proposed arrangements will no doubt encourage those that seek to replace the ICANN function with an inter-governmental treaty, and discourage those that have historically supported ICANN.

The net result is clear; by attempting to clear up outstanding litigation and gain access to virtually unbounded funding under the cover of bringing stability and predictability to the operation of this critical infrastructure and ICANN’s future, the ICANN staff will have irreparably destabilized everything that has been so carefully put in place over the last seven years.

ICANN staff must take greater care in ensuring that the entirety of ICANN’s needs is taken into account when crafting agreements and plans of this nature. ICANN is not just a non-profit California corporation with revenue, a budget, a strategic plan, staff, costs, a Board of Directors and a deal with the United States government to oversee the function of the DNS. ICANN is also a philosophy, a set of ideals, a community of users and an institution intended to promote a stable and effective internet that fosters innovation and competition. To date, it has been successful.

In its attempt to secure long-term access to a significantly larger and more stable single source of funds, the ICANN staff proposes to betray the philosophy, ideals and community that make ICANN a global institution with the support necessary to achieve these goals.

Any attempt to implement this proposal will be met with determined resistance. We strongly urge The ICANN Board to take the time to bring a fourth party, ICANN the community, into the negotiations. Additional dialogue must be undertaken to ensure that the arrangements with Verisign, through settlement or litigation, are entered into with the support of the community.

Tucows recommends that all stakeholders make themselves aware of the details of this proposed settlement beyond the very narrow presentation offered by the ICANN staff on the ICANN web site. We encourage you to make your views known to each of the organizations that can stop this decision: ICANN, the United States Department of Commerce, the United States National Telecommunications Infrastructure Administration, in addition to your own government representatives and agencies.

Submissions may be sent via email to;

ICANN	settlement-comments@icann.org
Carlos Gutierrez, Secretary United States Department of Commerce	cgutierrez@doc.gov
Michael Gallagher, Assistant Secretary, United States National Telecommunications Infrastructure Administration	mgallagher@ntia.doc.gov

The proposed settlement agreement can be found at
<http://www.icann.org/tlds/agreements/verisign/settlement-agreements.htm>

About Tucows

Tucows Inc. provides internet services and downloadable software through a global distribution network of more than 6,000 service providers. These service providers primarily consist of web hosting companies, internet service providers and providers of other services over the internet. Tucows' services include domain registration services, digital certificates, billing, provisioning and customer care software solutions, email and anti-spam services, Blogware and website building tools. Tucows is an accredited registrar with the Internet Corporation for Assigned names and Numbers, or ICANN. For more information, please visit: www.tucowsinc.com