

Staff Report of Public Comment Proceeding

Proposed Amendment to .COM Registry Agreement

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Section I: General Overview and Next Steps

General Overview:

On 1 December 2012, ICANN and Verisign, Inc., entered into a Registry Agreement under which Verisign, Inc. operates the .COM top-level domain. The agreement is set to expire on 30 November 2018, and includes a presumptive renewal right provision. ICANN posted for public comment [a proposed amendment to the .COM Registry Agreement](#). The proposed amendment: (1) extends the term of the .COM Registry Agreement to coincide with the term of the [Root Zone Maintainer Services Agreement](#) (RZMA) between ICANN and Verisign; (2) commits Verisign and ICANN to cooperate and negotiate in good faith to amend the .COM Registry Agreement by the second anniversary date of the proposed amendment in order to preserve and enhance the security of the Internet or the TLD; and (3) commits Verisign and ICANN to cooperate and negotiate in good faith to amend the .COM Registry Agreement as may be necessary for consistency with changes to the Cooperative Agreement between Verisign and the U.S. Department of Commerce. All other terms and conditions of the existing Registry Agreement remain unchanged.

From 30 June 2016 through 12 August 2016, ICANN posted the proposed amendment to the .COM Registry Agreement for public comment. At the time this report was drafted, ninety-nine comments were added to the forum.

Next Steps:

After the public comment process is completed for the proposed .COM Registry Agreement amendment, the amendment will be considered by ICANN's Board of Directors.

Section II: Contributors

At the time this report was prepared, a total of ninety-nine community submissions had been posted to the forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
International Trademark Association	Lori Schulman	INTA
Shai Media, LLC	NA	SML
European NGO Alliance for Child Safety Online	John Carr	eNACSO
Children's Charities' Coalition on Internet Safety	John Carr	CHIS
Centre for Internet & Society	Asvatha Babu	CIS
Anonymous Group	NA	AG
Internet Commerce Association	Philip S. Corwin	ICA
Intellectual Property Constituency	Steve Metalitz	IPC
XYZ.COM LLC	Daniel Negari	XYZ
Donuts Inc.	Mason Cole	DI
Redacted	NA	RD
Business Constituency	Steve DelBianco	BC

Individuals:

Name	Affiliation (if provided)	Initials
George Kirikos	Leap of Faith Financial Services Inc.	GK
Maxwell Pugh	NA	MP
Hennie Groot Lipman	NA	HGL
Donald Smith	NA	DS
Keven Dabney	NA	KD
TJ Scott Daniels	NA	TSD
Wang Wei	NA	WW
Sandeep G	NA	SG
Mary Smith	NA	MS
Steve 1	NA	S1
Thomas Russell	NA	TR
Colin Pape	ShopCity.com	CP
Tyson Waggener	NA	TW
Francois Carrillo	Cybertonic	FC
Wallace Rawson	NA	WR
Russ	NA	R
Andy Avots	NA	AA
Robert Borhi	NA	RB
Troy Hill	Live Domain Auctioneers LLC	TH
Suzanne Aubertin	NA	SA
Lance Zeidman	Guarantee Acceptance, LLC	LZ
Ricarda Koppel	NA	RK
Adam	NA	A
Clearance Crystals	NA	CC
Advik Patel	NA	AP
Lisa	NA	L

Ashok Mohanty	NA	AM
Maraca	NA	MA
Thomas B Rozof	Social Media Science, LLC	TBR
Taranjeet Singh	NA	TS
Pranit Pawar	NA	PP
Jay Lindfors	NA	JL
www.infodude.net	NA	IDN
Robert Redl	NA	RR
Brian Gupta	NA	BG
Lazo	NA	LA
J.C	NA	JC
Italo Barros	NA	IB
Gary Ameika	NA	GA
Louisa Lopez	NA	LL
Logan Gorgulu	NA	LG
Guy Biddlecombe	Luxac	GB
Roberta Meany	NA	RM
Jamie Wales	NA	JW
Naim Drid	NA	ND
Martin Senko	NA	MSE
Dominick Savillo	The Online Marketplace, LLC	DSA
MT	NA	MT
Praveen Ch	Domicious.com	PC
LaxmiNarsaiah Ch	NA	LC
Tim Koutroubas	NA	TK
Mike Solstice	Fedora Prime LLC	MSO
Johnny Freeman	NA	JF
Hugh W. Hedley	NA	HWH
Susan Macaulay	NA	SM
Allan Dow	NA	AD
Simon Polycarp	NA	SP
John Tindall	NA	JT
Joseph Raymond	Internet Ad Corp. Inc	JR
Nayeem Ashrafi	NA	NA
John Gleeson	HITNAMER.com	JG
Neil Jones	WHATDOMAINS.COM, LLC	NJ
Tony James	NA	TJ
Renshai	NA	RE
Chris B	NA	CB
Craig Douglas	NA	CD
Stefano Velez	NA	SV
Roy Lopez	Name Capital LLC	RL
Nick Di Gennaro	NA	NDG
Sean Kelly	NA	SK
Aaron Kuroiwa	Letutor.com	AK
Danny Loudon	NA	DL
Joe Alagna	101domain, Inc	JA
Chris Brennan	NA	CBR
Mgon	NA	MG

John Poole	DomainMondo.com	JP
Bronc Jordan	United We Internet	BJ
NA	NA	NP*
Michael D. Palage	NA	MDP
Vincent Willis	NA	VW
Dorith Candy	NA	DC
El Shuwix	NA	ES
Kurt	NA	K
George	NA	G

**Not provided*

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

ICANN has received various comments from the community on the proposed amendment to the .COM Registry Agreement. The comments submitted generally fall into the following categories and themes, each of which is explained in more detail below:

1. General Support for the Proposed .COM Amendment
2. Suggested Changes to the Proposed .COM Amendment
3. Concerns about Pricing of .COM Domain Names
4. Objection to Presumptive Renewal of the .COM Registry Agreement and Request for Competitive Bidding Process
5. Conforming the Terms of the .COM Registry Agreement to the New gTLD Registry Agreement and Other Enhancements
6. Linking the Term of the .COM Registry Agreement to the Root Zone Maintainer Services Agreement
7. Relationship of the Proposed .COM Amendment to the Cooperative Agreement between Verisign and the U.S. Department of Commerce
8. Consistency of Proposed .COM Amendment with ICANN's Core Values

1. General Support for the Proposed .COM Amendment

Some commenters were generally supportive of the amendment to the .COM Registry Agreement, and others expressed general support with certain caveats. Other comments expressed general support, but asked for ICANN and/or Verisign to clarify specific points related to implementation of consensus policy and the Cooperative Agreement with NTIA, among others. Some examples include the following:

- "The Business Constituency (BC) generally supports amendment of the .COM registry agreement to match its expiration date to the new Root Zone Maintenance Agreement, seeing this as an important way to assure security and stability of the root server system through the period of IANA transition. The BC notes that the proposed 2024 contract extension is the same result that would be obtained if the incumbent .COM operator were to extend its present agreement when it expires in 2018. Based on past and present performance, Verisign would likely meet the requirements to exercise its option for presumptive renewal in 2018. However, the BC has several questions and requests regarding the extension of the .COM contract at this time." (BC)
- "I have no objection to the proposed .COM Registry Agreement extension as it simply provides the same additional six year contract term that Verisign would be entitled to in 2018 under its contractual right of presumptive renewal." (JP)
- "Don't play with people's livelihood. Extend the contract for a much longer period of time and keep .com in capable hands." (JW)
- "ICA has no objection to the proposed .Com RA extension as it simply provides the same additional six year contract term that Verisign would be entitled to in 2018 under its contractual right of presumptive renewal. It will have the salutary effect of preventing GDD staff from attempting to impose the URS and other new gTLD RPMs on .Com during a time when an active ICANN Working Group is exploring the policy question of whether any of these RPMs should become Consensus Policy applicable to legacy gTLDs. Our non-objection is based on our understanding that the contract term extension will have no

impact on the pricing of .Com domains, as the current price freeze they are subject to is contained in the separate Cooperative Agreement between Verisign and the NTIA.” (ICA)

Other commenters who expressed a level of general support include AP, L and JA.

2. Suggested Changes to the Proposed .COM Amendment

Some of the comments submitted suggested improvements to the language used in the proposed amendment to provide additional clarity. The suggestions included clarifying the relationship of the Cooperative Agreement to the proposed amendment, making the amendment subject to pricing constraints in the Cooperative Agreement, and specifying the provisions or topics that would be the subject of good faith negotiations by the second anniversary of the effective date of the amendment. Other comments suggested more extensive revisions to the .COM Registry Agreement to bring it in line with new safeguards and intellectual property protections found in the New gTLD Registry Agreement. (Comments regarding these suggested revisions are summarized in item 5 of this section.) Some examples of these comments with suggested improvements to the amendment are as follows:

- “The promise to renegotiate aspects of the current contract after it has been awarded seems too vague to be relied upon. It contains no unavoidable commitment to progressive change.” (eNACSO)
- “Should Verisign fail to maintain and/or renew the Cooperative Agreement, this extension should be made null and void immediately on the date that the Cooperative Agreement is no longer in force.... The proposed extension MUST NOT BE CONSIDERED if the contract extension does not either A.) address pricing of .com domain names directly or B.) require a valid Cooperative Agreement with the NTIA at all times during the period of this new contract.” (TSD)
- “We would gladly support the renewal of the .COM contract as is, but only if one of the following is addressed by ICANN with relation to the extension of this contract: 1.) ICANN makes an adjustment to this extension to prohibit VeriSign’s raising of prices and additionally seeks to lower .com domain prices over the period of the contract. 2.) ICANN makes this contract extension subject to pricing constraints of the NTIA and Cooperative Agreement, makes this extension null and void if the Cooperative Agreement is not consistently in place, along with any provisions that might be imposed in the future by the Department of Commerce and/or Department of Justice. 3.) ICANN works with VeriSign to negotiate a situation where the .COM contract is put out for a public bid, and Verisign is still the successful winner of such a public bid.” (RD)
- “[I] urge icann and verisign to have wording in any new agreement or extension of any existing agreement to limit the renewal and registration price of dot com domain names[.]” (CB)
- “[S]ection 2 of the proposed extension (entitled “Future Amendments”) opens a separate and potentially more productive window for updating and improving the agreement.... However, because the ‘future amendments’ provision speaks in such general terms about the subject matter of amendments to be negotiated, and in order to enhance the transparency of the process, we urge ICANN and Verisign to commit now to advancing this goal in negotiations during the 2-year window, and to providing a timely opportunity for public comment on proposed amendments.” (IPC)
- “Verisign must at a minimum be restricted to their current fee for .coms and the new agreement must expressly forbid any price increases...” (JL)
- “- Incorporate pricing provision & force a yearly reduction of .com prices into this new RA”, and “Remove presumptive right of renewal clause – which will allow for this no-bid contract to be sent out for competitive bid and will benefit the entire Internet ecosystem”. (RK)

3. Concerns About Pricing of .COM Domain Names

Without expressing any views on the proposed amendment to the .COM Registry Agreement, various commenters discussed the pricing of domain names in the .COM registry. Some commenters suggested that

the current price cap in the .COM Registry Agreement must remain in place, while others recommended that prices must be reduced. Examples of those commenting on pricing of .COM domain names include the following:

- "I demand that ICANN force the reduction of pricing in .COM domain names and do not proceed with this 'generic' and 'non-detailed' extension which seems to only benefit Verisign without any details as is." (BJ)
- "This proposed RA should NOT be extended, because it will lay for the foundation for no pricing oversight on .COM domain names in 2018. Once VeriSign has no pricing oversight, they will be able to charge whatever they want for .COM domain names." (RK)
- "Do not allow .com price increases!" (SML)
- "Can you please reduce the price of Dot-Com domains as the registration fees are killing at the moment and I would like to register many more. Can you reduce the price down by \$3 or \$4 USD? Or anything would help, as there are many people out there, who, like me, would like to register more Dot-Coms. I enjoy picking Dot-Com domains monthly but if they were cheaper, I could afford to buy weekly or even daily." (JG)
- "Please do not remove the price restrictions on .com via Verisign's amendment." (RL)
- "I urge you to keep VeriSign under control and not allow them free reign to raise .com prices. This would devastate and crush new startups who are looking for an affordable priced domain. The new GTLDS are a prime example of what can happen if Registries are given full reign. Outrageous pricing and even more outrageous renewals. That's the biggest appeal of .com - it's affordable and the most recognized extension in the world." (TH)
- "Please dont increase the .com domain price as its the lifeline of small businesses and small developers." (TS)
- "Please register my opposition to giving Verisign Carte Blanche control over .COM pricing via the current Proposed Amendment to .COM Registry Agreement[.]" (JC)
- "I would like to express my interest in having the wholesale price of the .COM to remain at the current \$7.85 renewal price (inclusive of costs) for the 2018 to 2024 contract extension for the Proposed Amendment to .COM Registry Agreement." (HWH)

Other comments who addressed the pricing of .COM domain names include: GK, TSD, MS, TR, CP, TW, FC, WR, AA, RB, SA, LZ, CC, AM, MA, TBR, PP, JL, IDN, RR, BG, LA, GA, LL, LG, GB, RM, ND, MSE, DSA, MT, PC, LC, TK, MSO, JF, AD, SP, JT, JR, NJ, RE, SV, SK, AK, DL, CBR, M, NP, RD, VW, ES, K and G

4. Objection to Presumptive Renewal of the .COM Registry Agreement and Request for Competitive Bidding Process

Some commenters expressed opposition to the presumptive renewal provision in the .COM Registry Agreement and suggested that the presumptive renewal right should be taken away if certain events occurred (such as an uncured material breach of the .COM Registry Agreement). Other commenters expressed concerns over the renewal of the .COM Registry Agreement taking place two years ahead of its current expiration date. Some of these commenters suggested that instead of extending the .COM Registry Agreement with Verisign, ICANN should put the .COM Registry Agreement out for a competitive public tender. Examples of these comments include the following:

- "We oppose this proposed contract extension. The .com registry agreement, like all other registry agreements, should be instead put out to a competitive public tender to ensure that registrants are obtaining the lowest possible price for a fixed set of registry services (with accompanying SLA) for a fixed term (no more than 5 years, after which it would be again subject to a new public tender process). If there was going to be an amendment, that competitive public tender term should be the amendment that the community should be considering." (GK)

- "...ICANN should act in the spirit of its Bylaws and work with the NTIA and United State Department of Commerce to put the rights to operate the .COM top-level domain to a competitive public auction among capable internet registry operators for the benefit of the public. .COM is a unique generic top-level domain and, as shows by its oversight by the NTIA and US Department of Commerce, exists to provide a public service. Accordingly, it should be awarded to the Internet Registry Operator willing to operate the top-level domain in a manner most beneficial to the public." (XYZ)
- "ICANN MUST allow bidding for the .COM contract with other companies. Verisign should not have a monopoly over the extension and many companies have the technical capabilities to handle the DNS requirements. How come each time the contract comes up for renewal the public asks for competitive bidding and ICANN never does it?" (A)
- "By continuing to grant Verisign the .com Registry Agreement, this stamps the impropriety of corruption by not offering this opportunity to other entities through a public tender/competitive bid process. Verisign is not the only company that has the ability to manage the .com Registry. Therefore, by ICANN assigning a six-year extension leaves to question why this is being pushed two years early with no explanation given other than through the "presumptive renewal", which does not grant Verisign an early automatic extension of renewal." (R)
- "ICA believes that the ICANN community should begin a discussion of whether and under what conditions, other than material uncured contract breach, a registry should lose its right of presumptive renewal and face competitive market testing of its pricing policy through a rebid process. Such a possibility should certainly exist if a registry has been found by a court, or has admitted in a judicial or regulatory proceeding, to abuse of pricing power in violation of antitrust or competition laws, as ICANN is pledged to operate in the global public interest and as registries should carry out that same obligation via their contracts with ICANN and refrain from illegal conduct in their pricing and competitive activities. There may also be other circumstances beyond a finding or admission of illegal conduct that would justify competitive rebid of a registry contract, and that should be considered as this subject is addressed." (ICA)

Other comments about presumptive renewal or competitive bidding of the .COM Registry Agreement include those from: GK, MP, HGL, DS, KD, R, RK, WW, eNACSO, S1, MSE, CIS, IB, SM, NA, TJ, CD, NDG and DC.

5. Conforming the Terms of the .COM Registry Agreement to the New gTLD Registry Agreement and other Enhancements

Various commenters recommended that the proposed amendment go beyond extending the term of the current .COM Registry Agreement to include additional protections and safeguards such as those required by the New gTLD Registry Agreement. Some of these commenters note that certain legacy gTLD Registry Operators have adopted the general form of the New gTLD Registry Agreement (e.g. .PRO, .CAT, .TRAVEL) including the additional enhancements and safeguards, and .COM should be required to do the same. Some commenters suggest that not requiring .COM to be subject to the new enhancements, safeguards, and intellectual property protections in the New gTLD Registry Agreement does not support the public interest and serves to create an unfair and anticompetitive environment. Another commenter asked for confirmation that Verisign will be required to implement future developed consensus policies that may provide for additional safeguards and enhancements. Examples of these comments include the following:

- "INTA does not favor the amendment in its current form because it does not incorporate the consumer protections that apply to the new gTLDs and does not level the playing field among top level domain providers....The fact that the new gTLD provisions do not apply to the .com registry creates a significant gap of protection for trademark owners and consumers.... We strongly encourage ICANN to ensure that protections negotiated by the multistakeholder community extend to all top level domains." (INTA)

- "...in respect of new gTLDs, the Registry Agreements increasingly contain quite detailed requirements, for example with regard to verifying the true identities and bona fides of registrants. The new .com agreement should mirror these. Failure to do so will mean there is no level playing field and no contract uniformity. Verisign will be allowed to escape a layer of costs and responsibilities others are obliged to carry." (eNACSO)
- "The .com agreement must be updated to incorporate the improved anti-abuse tools which are already part of the Base Registry Agreement.... all of the new registries have taken on greater responsibilities to prevent and remedy abuses involving their domain names. These responsibilities include, among others: A Thick Whois architecture, to ensure the accessibility of registration data across the registry, a key factor for the investigation of a wide range of abuse cases, and to enable quicker response and resolution when domain names are used for illegal, fraudulent or malicious purposes. Enhanced post-registration rights protection mechanisms for trademarks, notably the Uniform Rapid Suspension process, an important supplement to the UDRP for the most clear-cut cases of cybersquatting; Requiring registrars of domain names within the TLD to impose and enforce antiabuse obligations on their registrants; Technical analysis and reporting requirements for specified forms of abuse.... The outlier status of the .com agreement creates an unlevel playing field for gTLD registries." (IPC)
- "Donuts is opposed to the extension of ICANN's agreement with Verisign in its proposed form. By simply renewing the .COM agreement under its current terms, ICANN and Verisign will have missed a significant opportunity to fulfill ICANN's self-defined mandate to increase competition in the DNS marketplace and preserve the security, stability and resiliency of the DNS by bringing provisions of the .COM agreement more in harmony with the contracts governing new gTLDs and many other legacy gTLDs that recently have been renewed....ICANN and Verisign chose not to update the .COM agreement with these consumer safeguards. The ultimate outcome here will be harm to consumers and the disparate treatment of ICANN's other contracted parties to their detriment." (DI)
- "I recommend for the Board to decline extending the 2012 Registry Agreement until 2024 and to begin negotiations with Verisign to enter into a new contract mirroring the baseline template that every new gTLD applicant has signed and which a growing number of other legacy gTLD operators have signed." (MDP)
- "The BC encourages Verisign to voluntarily adopt in .COM relevant aspects of the standardized registry contract used in the recent expansion of gTLDs. The BC supports universal adoption of the new gTLD registry agreement, which includes RPMs, GAC Safeguards, and Public Interest Commitments (PICs), while noting that the new gTLD registry agreement does not regulate domain name prices and permits registry-registrar integration." (BC)
- "... the BC requests that Verisign be required to confirm that it will implement global consensus policy for Thick WHOIS within .COM, per the 2018 deadline published by the Implementation Review Team... As a condition of the proposed .COM amendment, the BC requests confirmation from ICANN and Verisign that the .COM Registry Agreement would require implementation of rights protection mechanisms (RPMs) that fit within the definition of current and future Consensus Policies and are properly approved by ICANN's board." (BC)

6. Linking the Term of the .COM Registry Agreement to the Root Zone Maintainer Services Agreement

Some of the commenters indicated their opposition to the proposed amendment because it extends the term of the .COM Registry Agreement to coincide with the term of the Root Zone Maintainer Services Agreement (RZMA). Some of these commenters generally noted that the root zone infrastructure should never have become "inextricably intertwined" with Verisign's .COM operations, although others had no issue with this aspect. Other commenters questioned how linking the two agreements would enhance the security, stability and resiliency of root operations, and argued that the linkage represents a single source of failure. Some comments regarding the linkage of the .COM Registry Agreement to the RZMA are as follows:

- “We do not have anything against Verisign being awarded the RZMA for the time being. However, the .COM extension should in no way be linked to the RZMA. Even if it means ICANN (and eventually end users of the Internet) have to pay slightly more for the management of the RZMA, it is in the public’s best interest to try and keep RZMA functions completely separate and UNLINKED from management of the .COM namespace. The RZMA should be controlled independently of the .COM namespace. (AG)
- “The new Root Zone Maintainer Service Agreement is put into place between VeriSign and ICANN (which replaces most of the functions from the existing Cooperative Agreement.) The Cooperative Agreement (between VeriSign and NTIA) is allowed to naturally expire in 2018. The Cooperative Agreement contains the all-important pricing provision. This agreement will longer be necessary because almost all of the functions from the existing Cooperative Agreement have been moved to the new Root Zone Maintainer Service Agreement (besides pricing.) Thus, in 2018 when the Cooperative Agreement expires, VeriSign will no longer be subject to government-mandated price restraints.” (RK)
- “...ICANN since its very creation has been working to get out of bundled contracts with VeriSign (and its predecessor NSI), therefore it makes no sense that ICANN would agree to sync the .COM and RZMA agreements together even in just their terms. The comments provided by ICANN's Akram Atallah on the ‘inextricably intertwined’ nature of the .COM and RZM functions actually is support for why these functions should be separated as it represents a single point of failure.” (MDP)
- “Over the next two years, ICANN must work with Verisign to make sure that a ‘stable, secure and reliable’ internet does not hinge on a single player like the current situation with Verisign. Moreover, we would like ICANN to explain how exactly extending the agreement would enhance the security and stability of the internet and the TLD. In fact, this move only serves to compromise the future stability of the internet by further intertwining the TLD operations and the RZM responsibilities. Instead, Verisign needs to work on extricating its .COM operations from its RZM responsibilities.” (CIS)
- “The Business Constituency (BC) generally supports amendment of the .COM registry agreement to match its expiration date to the new Root Zone Maintenance Agreement, seeing this as an important way to assure security and stability of the root server system through the period of IANA transition.” (BC)

Additionally, ICA and JA recommended that ICANN technical staff begin exploring how some practical separation between root zone and .COM technical operations might be achieved, and to assure that such action does not pose a threat to the security and stability of the DNS. Other comments on this topic include those from IPC and JP.

Some other commenters requested specific changes to the RZMA, such as MDP’s comment that “[t]here should be a provision in the RZMA that prohibits either ICANN or Verisign from making any intellectual property claims to the processes involved in the signing/publishing of the root zone. If Verisign fails to waive any Intellectual Property Rights in connection with the RZM functions, ICANN should consider allocating financial resources to ensure that there are no proprietary rights associated with the RZM functions.”

7. Relationship of the Proposed .COM Amendment to the Cooperative Agreement between Verisign and the U.S. Department of Commerce

Some commenters requested additional clarification and explanation about the relationship of the proposed amendment to the .COM Registry Agreement and the Cooperative Agreement between Verisign and the U.S. Department of Commerce.

- “...the BC asks ICANN to clarify the status and renewal process for Verisign’s Cooperative Agreement with NTIA, which expires in 2018. We note that ICANN is not a party to the Cooperative Agreement, but we are keen to understand the factors and decisions that would determine whether the Agreement would be extended beyond 2018 and therefore encourage ICANN to engage in dialogue with NTIA and report back to the community on this matter.” (BC)

- “Had NTIA made clear what would happen to the Cooperative Agreement, particularly the price limitation on .COM domain names after November 30, 2018, in view of the IANA Stewardship Transition scheduled to occur upon lapse of the IANA functions contract on September 30, 2016, much of the fear, angst, frustration, hostility, and mistrust, as expressed in the many comments already submitted, could have been avoided. Likewise, had ICANN and Verisign made clear what would happen to the pricing of .COM domain names after November 30, 2018, should NTIA not extend the Cooperative Agreement including Amendment 32, many of the concerns already expressed in the comments could have been alleviated.” (JP)

Additional comments related to the Cooperative Agreement were also summarized above in the section titled “Suggested Improvements and Additions to the Proposed .COM Amendment”.

8. Consistency of Proposed .COM Amendment with ICANN’s Core Values

Some commenters expressed concern about whether the approval of the proposed amendment to the .COM Registry Agreement would be consistent with ICANN’s Bylaws and Core Values. In particular, these commenters noted that approval of the extension of the .COM Registry Agreement raises concerns about whether ICANN is adhering to its Core Values related to non-discriminatory or preferential treatment, serving the public interest, transparency, and competition. Some of these comments include the following:

- “ICANN's core values state that it should ‘[promote] competition in the registration of domain names where practicable and beneficial in the public interest.’ The mere consideration of an early contract extension on the .com contract with VeriSign at the current pricing is 100% against ICANN's core values. And a slap in the Internet Community's face. ICANN should not allow this early extension. Nor should ICANN even consider it. ICANN should encourage and promote competition. ICANN should work in the public's favor and do what is possible to force this contract to go to public tender, and/or to force VeriSign to change the gluttonous windfall rate that it has on the .com contract.” (KD)
- “If VeriSign is awarded this proposed contract extension through 2024, the amount of money is astronomical. Why is ICANN not doing anything about this???? How is this fair? Why is nobody looking out for the global stakeholder community and forcing an immediate price reduction for .com domains? Why is this sweetheart contract which benefits both ICANN and VeriSign not being put out to a competitive bid? Why is there any need to get this contract renewed today? The contract for .com should be put to a competitive bid, or VeriSign should be forced to adjust its prices to reflect what is reasonable.” (DS)
- “This is not about whether Verisign should continue to operate (and profit from) .com: it should. Nor is it about ICANN unilaterally imposing any new requirements on Verisign. Rather it is about — [1] ICANN living up to its commitments to act in the public interest, by seeking to include in its contracts modern best practices for combating abusive domain name registrations; [2] ICANN living up to its commitment (in the Affirmation of Commitments) to address competitive issues by providing a level playing field among legacy and new gTLDs; [3] Verisign demonstrating its commitment to be an industry leader, not just in terms of its size and bulk in the market sector that it dominates, but also in terms of the practices and policies it follows to minimize the level of abuses occurring in that sector.” (IPC)
- “By not modifying the existing .COM registry agreement, ICANN cannot meet its obligations to enable competition or to avoid disparate treatment[.]” (DI)
- “It is unfortunate that discussions of the .COM contract renewal are done behind closed doors. Therefore, most people in the ICANN community, the Internet community and the general public do not know what exactly is in contract between the companies.” (BJ)

“Without having a simple summary of changes from the last ICANN and VeriSign contract, you both are doing a disservice to those users with or considering a .com. [...] Conspiring in a way that is covert and hidden from those without a legal background is like being the playground bully and simply is not acceptable any more.” (CB)

Some commenters also claimed that ICANN is not ready to be free from the control of the US government by referring to how ICANN and Verisign discussed and agreed on the proposed amendment (GK). While some commenters expressed their disappointment over amendment negotiations taking place between ICANN and Verisign without including the community (BJ), others urged ICANN to act according to its Bylaws (XYZ), to work for the public interest, to avoid preferential treatment (DI), and to take into account the comments added by the community (GK, MS, RR, BJ).

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

ICANN appreciates all the comments and suggestions added to the public forum for the proposed amendment to the .COM Registry Agreement and also acknowledges the concerns expressed over the proposed amendment to .COM Registry Agreement.

Suggested Changes to the Proposed .COM Amendment

ICANN acknowledges the comments that recommend changes to the proposed amendment. With respect to being more specific about what provisions could be discussed by the two-year anniversary of the amendment, ICANN notes that the language as drafted balances providing a commitment to engage in negotiations, while providing leeway to consider future topics related to preserving and enhancing the security and stability of the Internet or the TLD in this changing landscape.

With respect to revising the proposed amendment to account for potential changes to or cancellation of the Cooperative Agreement between Verisign and the Department of Commerce, ICANN notes that the proposed amendment already takes into account the Cooperative Agreement. The amendment includes language requiring ICANN and Verisign to engage in good faith negotiations to make changes to the .COM Registry Agreement as may be necessary for consistency with changes to, or the termination or expiration of, the Cooperative Agreement.

Concerns about Pricing of .COM Domain Names

ICANN acknowledges all of the comments submitted addressing prices for .COM domains. The cost of .COM domains is capped at \$7.85 until 30 November 2018. The current pricing of the .COM registry is defined by two separate contracts (1) the .com Registry Agreement between Verisign and ICANN; and (2) the Cooperative Agreement between Verisign and the Department of Commerce. After 2018, Verisign and NTIA will have to negotiate to change the terms for the Cooperative Agreement or agree to end the Cooperative Agreement before discussing new pricing of the .COM domain with ICANN. The proposed amendment does not change these provisions. As discussed above, the proposed amendment: (1) extends the term of the .COM Registry Agreement to coincide with the term of the Root Zone Maintainer Services Agreement (RZMA) between ICANN and Verisign; (2) commits Verisign and ICANN to cooperate and negotiate in good faith to amend the .COM Registry Agreement by the second anniversary date of the proposed amendment in order to preserve and enhance the security of the Internet or the TLD; and (3) commits Verisign and ICANN to cooperate and negotiate in good faith to amend the .COM Registry Agreement as may be necessary for consistency with changes to the Cooperative Agreement between Verisign and the U.S. Department of Commerce. All other terms and conditions of the existing Registry Agreement remain unchanged.

Objection to Presumptive Renewal of the .COM Registry Agreement and Request for Competitive Bidding Process

ICANN notes that Section 4.2 of the .COM Registry Agreement includes a presumptive right of renewal, as do all of ICANN's registry agreements. [The presumptive renewal clause is a provision within registry agreements that allows a registry operator the right to renew the agreement at its expiration, subject to the terms of their presumptive renewal clauses. These renewal provisions address stability and security concerns, i.e., to encourage long-term investment in robust TLD operations. This has benefitted the community in the form of reliable operation of registry infrastructure. ICANN has previously described the rationale for presumptive renewal for registries: "Absent countervailing reasons, there is little public benefit, and some significant potential for disruption, in regular changes of a registry operator. In addition, a significant chance of losing the right to operate the registry after a short period creates adverse incentives to favor short term gain over long term investment. On the other hand, the community, acting through ICANN, must have the ability to replace a registry operator that is not adequately serving the community in the operation of a registry."

Conforming the Terms of the .COM Registry Agreement to the New gTLD Registry Agreement and Other Enhancements

ICANN takes note of the comments suggesting that Verisign transition to the form of the New gTLD Registry Agreement or adopt some of the new safeguards, enhancements and other protections found in the New gTLD Registry Agreement. ICANN notes that the proposed amendment posted for public comment is a simple extension of the current term of the .COM Registry Agreement, and that moving to the form of the New gTLD Registry Agreement would require longer discussion and community consultation. Proposing a simple amendment at this time to extend the term of the .COM Registry Agreement is intended to ensure the continued stable, secure, and reliable operation of the .COM TLD.

ICANN notes, however, that the proposed amendment includes a provision that commits ICANN and Verisign to cooperate and negotiate in good faith to amend the .COM Registry Agreement by the second anniversary date of the proposed amendment in order to preserve and enhance the security of the Internet or the TLD. This language was negotiated to provide an opportunity for longer term discussions and additional community input that may be needed to discuss potential changes to preserve and enhance the security of the Internet or the .COM TLD.

With respect to comments asking for confirmation that Verisign will be required to implement future developed consensus policies that may provide for additional safeguards and enhancements, ICANN notes that Section 3.1 (b) of the .COM Registry Agreement states that, "At all times during the term of this Agreement and subject to the terms hereof, Registry Operator will fully comply with and implement all Consensus Policies found at <http://www.icann.org/en/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with ICANN's Bylaws and as set forth below."

Linking the Term of the .COM Registry Agreement to the Root Zone Maintainer Services Agreement

ICANN notes that proposed amendment to .COM Registry Agreement aims at extending the term of the .COM Registry Agreement to coincide with the term of the Root Zone Maintainer Services Agreement [approved](#) by the ICANN Board on 9 August 2016.

Verisign has been providing "registration services" under its Cooperative Agreement with the U.S. Department of Commerce, which was broadly defined to include root zone maintainer functions and Top Level Domain (TLD) registry services. Given the historically unified nature of the root zone maintainer function and TLD registry services under the Cooperative Agreement, much of Verisign's TLD operations for .COM are "intertwined" with the root zone maintainer operations. A key component of ensuring security of the root

operations was making sure that those operations continued to benefit from its historic association with .COM operations. This was achieved by the proposed simple extension of the .COM Registry Agreement to coincide with the term of the new RZMA.

While the terms of the agreements are linked together in the sense that they would expire at the same time, the agreements do not contain any provisions linking the performance of the obligations under the .COM Registry Agreement with the obligations under the RZMA. In fact, the RZMA includes provisions that provide the community the ability – through a consensus-based, community-driven process – to enable ICANN to transition the root zone maintenance function to another service provider after the third anniversary of the RZMA.

With regards to intellectual property issues and the RZMA, although not directly related to the proposed .COM amendment which is the subject of this public comment period, it should be noted that Section 4(d)(ii) of the RZMA provides that “ICANN and Verisign each acknowledge and agree that it does not possess any rights in the Root Zone File or Service Data.” Also under the RZMA Verisign grants ICANN a license to use the root zone management interface, and must cooperate with a transition to a successor operator.

Relationship of the Proposed .COM Amendment to the Cooperative Agreement between Verisign and the U.S. Department of Commerce

ICANN acknowledges comments asking for clarification regarding the next steps for the Cooperative Agreement between Verisign and the Department of Commerce. As noted by some commenters, ICANN is not a party to the Cooperative Agreement.

Currently, Verisign performs the root zone maintainer function pursuant to the Cooperative Agreement with the Department of Commerce. As stated in the FAQ provided in the [“Root Zone Administrator Proposal Related to the IANA Functions Stewardship Transition”](#), “Once the parallel testing for root zone management has proven capable of performance in the absence of the RZA / NTIA role and the IANA Stewardship transition implemented, NTIA and Verisign will amend the Cooperative Agreement as appropriate.”

ICANN also notes that the proposed amendment to the .COM Registry Agreement includes a provision requiring ICANN and Verisign to cooperate and negotiate in good faith to amend the terms of the .COM Registry Agreement as may be necessary for consistency with changes to, or the termination or expiration of, the Cooperative Agreement. Proposed changes that may result from such good faith negotiations would be published by ICANN for comment by the ICANN community.

Consistency of Proposed .COM Amendment with ICANN’s Core Values

ICANN acknowledges the comments concerning adherence to ICANN’s Bylaws including the Core Values specified in Article I, Section 2. The Bylaws enumerate core values that should guide the decisions and actions of ICANN in performing its mission, and ICANN takes seriously its commitment to those values. ICANN believes that executing registry agreements and amendments thereto are consistent with the Core Values in ICANN’s Bylaws.

ICANN further acknowledges comments concerning competitive issues and providing a level playing field. Article II, Section 3 of ICANN’s Bylaws state, “ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.” ICANN notes the .COM Registry Agreement contains many different terms that are not present in other registry agreements. These unique terms might be considered either favorable or unfavorable depending on one’s point of view. For example, the

price control provision in Section 7.3 of the .COM Registry Agreement tightly controls the ability of the .COM registry operator to raise prices in a manner that is not present in any other registry agreements.

Finally, as per the comments relating to how ICANN processes the comments added to the public comment forum, it should be noted the public comment process provides a mechanism for ICANN's decision-making whereby the community is given an opportunity to comment upon proposals for at least 40 days. Comments are summarized, analyzed and discussed in the Board's deliberation process. Any Board action will be documented in posted minutes accompanied by detailed rationale for the decision.

Next Steps: Following the completion of the public comment process, the proposed amendment to the .COM Registry Agreement will be considered by ICANN's Board of Directors.