

MarkMonitor Comment on Proposed Amendment 3 to the .COM Agreement

As both an ICANN-accredited registrar and as an advocacy voice for the world's most-trafficked domain names that use a .com TLD, MarkMonitor appreciates the opportunity to comment on the Proposed Amendment 3 to the .COM Registry Agreement.¹ We support many of the terms in the proposed amendment, but we must note that one assumption underlying the proposed amendment is factually incorrect and requires further review.

Correction of the Assumption

The assertion that the historical prohibition on Verisign owning a registrar was limited to the .com TLD is factually inaccurate. On the contrary, the 2001 Amendment Number 23 to the Cooperative Agreement memorializing the "legal separation of the ownership of its [Verisign's] Registry Services business from its registrar business" included all TLDs then run by Network Solutions (as Verisign's predecessor as Registry Operator for the .com TLD).² Verisign's first .com Registry Agreement says plainly, "Registry Operator shall not acquire, directly or indirectly, control of, or a greater than fifteen percent ownership interest in, **any** ICANN-accredited registrar"³ (emphasis added) without qualification as to any TLD. This language was put in place five years after the .net Registry Agreement which stated explicitly, "Registry Operator shall not act as a registrar with respect to **the Registry TLD**."⁴ The general prohibition, rather than the specific, was clearly intended for the Registry Operator of the market juggernaut .com TLD. Clarity on this point is even more important with Verisign on the eve of launching the .web TLD, which represents the only TLD from the 2012 application round that is sufficiently short, generic, and ubiquitous in internet parlance to threaten the 73% gTLD market share Verisign already enjoys from its monopoly on .com and .net.⁵

MarkMonitor Substantive Comment

The term of greatest importance to MarkMonitor and to our clients is the long-due inclusion of Public Interest Commitments (PICs) in the .com Registry Agreement mirroring the base new gTLD Registry Agreement ("RA"). We commend ICANN and Verisign for including these PICs, and for closing the loophole resulting from the ambiguity of the term "periodically" in the base RA PICs.

MarkMonitor further commends ICANN and Verisign for demonstrating a commitment to "the security, stability, and resiliency of the DNS" with the draft Letter of Intent ("LOI")⁶ published in connection with the proposed amendments. We encourage ICANN and Verisign to take a broader view of ICANN's remit, and we call for them to commit in the LOI to address the IP-related threats, "piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting..."⁷ as included in the PICs. While commercial users of the DNS are still actively attempting to begin "working with Verisign and other ICANN stakeholders in the coming year on trusted notifier"

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

² <https://www.ntia.doc.gov/files/ntia/publications/amend23.pdf>

³ https://www.ntia.doc.gov/files/ntia/publications/amend30_11292006.pdf. Article VII, Section 7.1(c).

⁴ <https://www.icann.org/resources/unthemed-pages/registry-agmt-net-2001-05-25-en>. Section 3.5.3.

⁵ <https://domainnamestat.com/statistics/tldtype/generic>

⁶ <https://www.icann.org/sites/default/files/tlds/com/com-proposed-loi-03jan20-en.pdf>

⁷ <https://www.icann.org/public-comments/com-amendment-3-2020-01-03-en>

as promised in 2018⁸, MarkMonitor also welcomes Verisign to demonstrate this commitment by joining the registries and registrars who have committed publicly to address certain types of non-technical abuse in the DNS Abuse Framework.⁹ We finally note that noncommittal language including, “work in good faith to...”, “within a reasonable period of time following...”, and “in a form reasonably appropriate for the .com TLD” provides little assurance that such a LOI is truly intended to bind the parties to any real outcome. If ICANN and Verisign are serious about the LOI, they must clearly commit to what will be done by whom, and when.

Conclusion

MarkMonitor and our clients recognize the value of the very high threshold for the removal of price caps in .com, and we are pleased to see that there is no proposed change to that threshold. As to the proposed amendment regarding price increases, while it might initially appear counterintuitive for a registrar and its registrants to embrace higher pricing, many of our clients appreciate the deterrent value of higher-priced domain names to would-be bad actors. We do, however, demand caution and restraint on price increases in such a high-volume TLD, noting that even a modest increase multiplied across the volume of domains that our clients own would represent a significant expense. Accordingly, we appreciate and require at a minimum the existing notice time and opportunity to renew at the current rate prior to pricing increased going into effect.

Thank you for considering our comments. We welcome any questions you may have.

Respectfully submitted,

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⁸ <https://www.ntia.doc.gov/press-release/2018/ntia-statement-amendment-35-cooperative-agreement-verisign>

⁹ <http://dnsabuseframework.org/>