

ICANN DECISION PAPER

TITLE: **Amendment 3 to .COM Registry Agreement, and
Binding Letter of Intent between ICANN and Verisign**

EXECUTIVE SUMMARY:

The ICANN organization (ICANN org) and Verisign, Inc. (Verisign), the registry operator of the .COM top-level domain (TLD), have reached a preliminary agreement to amend the .COM Registry Agreement (RA). ICANN org and Verisign have agreed on terms to an amendment to the .COM RA ([Amendment 3](#)) and accompanying framework to work together on additional initiatives related to enhancing the security, stability, and resiliency of the Domain Name System (DNS). This framework is included in a [proposed binding Letter of Intent \(LOI\)](#) between ICANN org and Verisign. This preliminary agreement is the result of bilateral negotiations between the two parties.

The proposed Amendment 3 and the proposed binding LOI satisfy the parties' agreement to negotiate certain terms as described in the first amendment to the .COM RA ([Amendment 1](#)), dated 20 October 2016. Under Amendment 1, the parties agreed to cooperate and negotiate in good faith to amend the .COM RA as necessary to reflect changes made to Verisign's [Cooperative Agreement](#) with the United States Government Department of Commerce (DOC) (Cooperative Agreement), and to amend the terms to preserve and enhance the security and stability of the Internet or the .COM TLD.

ICANN org conducted [a Public Comment process](#) on the proposed Amendment 3 and the proposed binding LOI from 3 January 2020 through 14 February 2020. Per ICANN org's standard practice, the comments have been reviewed, summarized, and analyzed into a report which has been shared with the Board for its consideration and [published](#).

The Public Comment forum generated significant input and interest from the community, with over 9000 comments. The vast majority (95 percent) of the comments expressed concern related to the proposed increase to the maximum allowable wholesale price of .COM registry services. These concerns came primarily from existing registrants, including domain investors or "domainers", and registrars.

ICANN org has briefed and consulted with the Board at every stage of the process including prior to negotiations, prior to completing negotiations, and after review of the public comments.

BACKGROUND:

The .COM Registry Agreement and The Cooperative Agreement

The current [.COM RA](#) between ICANN org and Verisign was established in December 2012, contains a six-year term, and as amended, expires November 30, 2024, with a presumption of renewal unless a

material uncured breach of the agreement has occurred, including a failure to pay fees to ICANN org, and such breach remains uncured following a determination by an arbitrator or court. The .COM RA is substantially different from the [Base gTLD Registry Agreement](#) (Base RA). While both forms of agreement prescribe a fairly common set of obligations on the registry operator and ICANN org, the current .COM RA generally includes higher performance levels but with different technical specifications for functions including the escrow of registry data, provision of WHOIS information, and zone file access, than those in the Base RA, and the details of how to remedy a non-compliance for these functions also differs.

In October 2016, ICANN org and Verisign agreed to Amendment 1 of the .COM RA, which extended the term of the agreement to 30 November 2024, and added the following provision related to future amendments:

The parties shall cooperate and negotiate in good faith to amend the terms of the Agreement (a) by the second anniversary of the Amendment Effective Date, to preserve and enhance the security and stability of the Internet or the TLD, and (b) as may be necessary for consistency with changes to, or the termination or expiration of, the Cooperative Agreement between Registry Operator and the Department of Commerce.

In addition to the term extension, Amendment 1 created the expectation to incorporate relevant changes from the Cooperative Agreement and to make revisions by the end of October 2018 that will preserve and enhance the security and stability of the Internet or the TLD. In 2018, the parties agreed to handle these revisions once the changes to the Cooperative Agreement were completed.

On 1 November 2018, the DOC and Verisign announced [Amendment 35 to the Cooperative Agreement](#). The most notable change in this amendment is the ability to increase the maximum wholesale price of a .COM registration. Under a previous amendment to the Cooperative Agreement, the maximum price Verisign could charge a registrar for a .COM domain name was US\$7.85. The amended Cooperative Agreement provides Verisign the ability to increase prices for both new registrations and renewals by seven percent per year in the final four years of each six-year period, and the first six-year period commenced on 26 October 2018. The DOC cited that “ccTLDs, new gTLDs, and the use of social media have created a more dynamic DNS marketplace” as part of its justification for the changes to the price controls. In early November 2018, Verisign submitted a proposed amendment to the .COM RA to ICANN org based on Amendment 1 to incorporate the pricing provisions as outlined in Amendment 35 of the Cooperative Agreement. On 3 January 2020, ICANN org and Verisign announced a preliminary agreement in the form of the proposed Amendment 3 to the .COM RA and a binding Letter of Intent between ICANN org and Verisign. Simultaneously, on 3 January 2020, ICANN org published this proposal for Public Comment. The comment period closed on 14 February 2020, with over 9,000 comments. Per ICANN org’s standard practice, the comments have been reviewed, summarized, and analyzed into a report which has been shared with the Board for its consideration and published.

Domain Name Market Dynamic

In generic top-level domains (gTLDs), registry operators set wholesale prices for domain names. It is registrars that set “retail” prices and speculators who set “aftermarket” or “secondary market” prices. ICANN org has observed that while the wholesale price for .COM domain names has been frozen at US\$7.85 since 2012, retail prices for .COM renewals (a more accurate measure of true prices since many registries and registrars discount initial registration fees) have continued to rise. In fact, GoDaddy, the world’s largest provider of domain name registrations, applied a 20 percent increase to .COM domain renewal prices in early 2019, bringing its standard renewal fee for a .COM domain name from US\$14.99 (in 2018) to US\$17.99 (for 2019) and several other registrars, including Namecheap, imposed similar price increases to their customers.

Additionally, ICANN org observed that many of those that fueled the high volume of comments on this topic with publicity campaigns, including the Internet Commerce Association (ICA) and Namecheap, are active players in the so called “aftermarket” for domain names, where domain name speculators attempt to profit by “buying low and selling high” on domain names, forcing end users to pay higher than retail prices for desirable domain names. According to Namebio.com the average price of a .COM domain name traded on the secondary market and reported to Namebio.com was US\$2,415, while the median price was US\$1,643. This is one view of that from a particular market sector but may not be representative of the entire secondary market. ICANN org recognizes the data set from Namebio is non-exhaustive as many transactions are not reported to Namebio.com, it does contain over 600,000 transactions on record. On the ultra-premium end of the spectrum, the top five highest price .COM domain name transactions in USD according to DNJournal.com are:

1. Voice.com - \$30,000,000
2. Sex.com - \$13,000,000
3. Tesla.com - \$11,000,000
4. Fund.com - \$9,999,950
5. Porn.com - \$8,888,888

RATIONALE:

Together, the proposed Amendment 3 and the proposed binding LOI satisfy the parties’ obligations under Amendment 1 and accomplish five primary objectives:

1. Alignment of certain terms of the .COM RA with Amendment 35 of the Cooperative Agreement, including the maximum allowable pricing provision for .COM registry services.
2. New commitments from Verisign related to mitigating or combating DNS security threats.
3. Additional funding to support ICANN org’s core mission to ensure the stable and secure operation of the Internet's unique identifier systems.
4. Alignment of certain technical and reporting obligations for the .COM TLD with those in the Base gTLD Registry Agreement (Base RA).
5. Incorporation of commitments related to the Registration Data Access Protocol (RDAP).

Objective 1: Alignment with Amendment 35 of the Cooperative Agreement

The price for .COM registry services has been static at US\$7.85 since 2012. This price freeze was established by the DOC in [Amendment 32 of the Cooperative Agreement](#). Under Amendment 35, the DOC noted that the domain name marketplace had grown more dynamic and concluded that it was in the public interest that, among other things, Verisign and ICANN org may agree to amend the .COM RA to permit an increase to the maximum allowable wholesale price for .COM registry services, up to a maximum of seven percent in each of the final four years of each six-year period (the first six-year period commenced on 26 October 2018). The proposed Amendment 3 to the .COM RA reflects this change, essentially restoring the pricing structure from the 2006 .COM RA.

As anticipated, the proposed increase to the maximum wholesale price for .COM registry services generated significant community attention, and comments related to this aspect of the proposed agreement make up 95 percent of the 9,043 comments received. Of those that self-identified, comments about this topic were received from .COM registrants, domain investors, and domain name registrars. The comments about the proposed changes to the maximum allowable wholesale price for .COM registry services were nearly unanimous in voicing disagreement or concern and commenters provided a variety of reasons why they are against the change. ICANN org understands the commenters' perspective that they don't want an increase in price of .COM domain names.

It is important to remember that the proposed Amendment 3 retains a built-in registrant protection related to price. As the registry operator, Verisign continues to be required to provide at least six months' notice to registrars of any wholesale price increase. This allows registrars, on behalf of their registrant customers, to register or renew .COM domain names during the notice period for up to a 10-year total registration term, at the then-current price, prior to any increase. This allows for the ability to lock in current wholesale prices for up to 10 years. Although registrars are not obligated to offer 10-year registrations, registrants have the ability to transfer their domain names to any accredited registrar that does.

While some commenters requested market analysis or economic study prior to ICANN taking action on the proposed amendment, ICANN org is not a competition authority or price regulator and ICANN has neither the remit nor expertise to serve as one. Rather, as enshrined in ICANN's Bylaws, which were developed through a bottom up, multistakeholder process, ICANN's mission is to ensure the security and stability of the Internet's unique identifier systems. Accordingly, ICANN must defer to relevant competition authorities and/or regulators, and let them determine if any conduct or behavior raises anti-competition concerns and, if so, to address such concerns, whether it be through price regulation or otherwise. As such, ICANN org has long-deferred to the DOC and the United States Department of Justice (DOJ) for the regulation of wholesale pricing for .COM registry services. For example, the 2006 version of the .COM RA included a near identical set of restrictions on the pricing for .COM registry services as proposed in Amendment 3. These restrictions were based on the guidance and approval of the DOC under Amendment 30 of the Cooperative Agreement. Then in 2012, the DOC instructed Verisign to

freeze the maximum wholesale price of .COM registry services at US\$7.85 and memorialized this in Amendment 32 of the Cooperative Agreement; this wholesale price freeze was in turn inserted into the current version of the .COM Registry Agreement.

In addition, the proposed Amendment 3 reflects language in Amendment 35 to the Cooperative Agreement clarifying that the restrictions on Verisign's ownership of ICANN-accredited registrars in the .COM RA are intended to apply solely to the .COM TLD. While several registrars raised questions and concerns about this proposed change, ICANN org is again applying the direction given to Verisign by the DOC. The provisions in the .COM RA to prohibit Verisign from holding a controlling interest in a registrar for .COM names is contrary to the requirements of the Base RA, which enable such "vertical integration" with certain requirements and restrictions. If Verisign were to choose to participate as a registrar or reseller in new gTLDs, it would be bound by Section 2.9 of the Base RA which requires any registry operator to abide by certain restrictions and processes for doing so, and these may include referral to the relevant competition authority.

In summary, while ICANN org received a high volume of comments from the public suggesting that ICANN org not move forward with the changes to the pricing provisions in the proposed Amendment 3, ICANN org is electing to instead continue to defer to the DOC and DOJ, by applying the terms as agreed between the DOC and Verisign in Amendment 35 to the Cooperative Agreement.

Objective 2: New commitments from Verisign related to mitigating or combating DNS security threats.

DNS abuse has been one of the most discussed topics within the ICANN community for several years. This is why it was important for ICANN org and Verisign to include commitments to mitigate DNS security threats in the proposed amendment and binding LOI. The proposed Amendment 3 contains certain commitments that directly relate to the mitigation of DNS security threats. The requirements are based on [Specification 11, Sections 3A and 3B](#) of the Base RA, which obligate the registry operator to: (i) require its accredited registrars to include in their registration agreements provisions prohibiting domains from being used to perpetrate DNS security threats; and (ii) at least once a month conduct scans of its zone to identify domains being used to perpetrate DNS security threats. In addition to the contractual requirements in the proposed Amendment 3, ICANN org and Verisign have agreed on a framework for working together to support additional enhancements to the security, stability, and resiliency of the DNS, including to help combat DNS security threats. This agreement is in the form of a proposed binding LOI between Verisign and ICANN org.

Overall, comments were primarily positive regarding the inclusion of new commitments from Verisign related to mitigating or combating DNS security threats with no objection to inclusion of Specification 11 3(a) and 3(b) in the proposed Amendment 3. Some in the community requested a broader definition for DNS security threats while others were concerned that the LOI put Verisign outside or above others within the ICANN community. The proposed LOI utilizes the definitions of DNS security threats from Specification 11 of the Base RA and includes provisions that enable adjustment to the definition. This

was deliberate so not to pre-empt the ICANN community. Together the proposed Amendment 3 and binding LOI add commitments to mitigate and combat DNS security threats to the world's largest registry.

Objective 3: Additional funding to ICANN org to support ICANN org's core mission to ensure the stable and secure operation of the Internet's unique identifier systems.

The proposed LOI also provides that Verisign will contribute US\$20 million dollars over five years, beginning on 1 January 2021, to support ICANN's initiatives to preserve and enhance the security, stability, and resiliency of the DNS, including root server system governance, mitigation of DNS security threats, promotion and/or facilitation of Domain Name System Security Extensions (DNSSEC) deployment, the mitigation of name collisions, and research into the operation of the DNS.

Comments were mixed in support of Verisign's commitment to fund ICANN org's initiatives to preserve and enhance the security, stability, and resiliency of the DNS. While some were supportive of the contribution, other members of the community seem skeptical about Verisign's motives in offering the contribution and some perceived a lack of transparency regarding how ICANN org will use the funding. ICANN org agrees with and supports the need for accountability and transparency regarding how the funds are used and is committed to full transparency to provide the ICANN community the appropriate level of information as such funds are received and used. ICANN intends that all impacts related to these funds be incorporated into ICANN's annual planning and budgeting process, as well as ICANN's periodic financial reporting. In this process, ICANN org carries out extensive community engagement and consultation throughout the entire planning process, including webinars and meetings with ICANN's Supporting Organizations (SOs), their stakeholder groups, and the Advisory Committees (ACs), as well as formal Public Comment proceeding on all planning documents, including strategic plan, operating plans, and budgets. The [Empowered Community](#) can exercise rejection powers on Board decisions adopting the strategic plan, the five-year operating and financial plan, and the annual plan and budget, providing for a complete measure of accountability.

Objective 4: Alignment of certain technical and reporting obligations for the .COM TLD with those in the Base RA.

The Base RA was developed to support the 1200-plus new gTLD registries created under the 2012 New gTLD Program. It contains standardized technical and reporting obligations for registry operators of new gTLDs. Over time, ICANN org has been working to standardize the technical and reporting requirements across all gTLDs to the extent possible and practical to ensure technical and operational consistency across the gTLDs. The proposed Amendment 3 to the .COM RA includes updates to several technical and reporting specifications to bring certain requirements of the following technical specifications more in line with those of the Base RA:

- Registry Data Escrow (appendix 1A and 2A)
- WHOIS and Registration Data Publication Services (Appendix 5A)

- Zone File Access (Appendix 3A)
- Registry Reporting (Appendix 4A)

None of the comments received directly tied to technical or reporting obligations, though comments were received regarding the decision to include or not include certain provisions from Specification 11 of the RA or of the Uniform Rapid Suspension (URS) Rights Protection Mechanism. While the Public Interest Commitment Dispute Resolution Procedure (PICDRP) from the Base RA was not included in Appendix 11 of the proposed Amendment 3, the provisions in Appendix 11 are enforceable by ICANN org's Contractual Compliance function. Any Internet user is able to submit complaints to ICANN Contractual Compliance or ICANN Contractual Compliance may identify an issue through its proactive monitoring. In either case, ICANN Contractual Compliance will work to ensure that Verisign is abiding by its agreement, or appropriately remediates the issue to return to compliance. The URS was not included in the proposed Amendment 3 because ICANN org's primary focus in the negotiations were provisions to enhance or preserve security, stability, and resiliency as committed in Amendment 1.

Objective 5: Incorporation of commitments related to the implementation of the Registration Data Access Protocol (RDAP).

In support of objective 5, the proposed Amendment 3 includes provisions related to the implementation of Registration Data Access Protocol (RDAP). ICANN org recently entered into negotiations with the gTLD Registries Stakeholder Group to incorporate more robust requirements related to RDAP and to transition the technology of choice for Registration Data Directory Services (RDDS) from WHOIS protocol to RDAP for the Base RA.

Since .COM does not utilize the Base RA, these changes would not apply to the .COM RA. In the proposed Amendment 3, ICANN org and Verisign have agreed to an initial set of requirements for RDAP, based on discussions with a working group of contracted parties focused on RDAP, and to adjust these requirements as needed to align with what ICANN org ultimately negotiates with the gTLD Registries Stakeholder Group for the Base RA. The agreement with Verisign for .COM does not include any sunseting of obligations for WHOIS services at this time so that the transition can be coordinated in alignment with all other gTLDs and ICANN-accredited registrars.

Consultation with the ICANN Board

The .COM RA is arguably the most important contract under ICANN's responsibility. ICANN org consulted with the ICANN Board prior to negotiating with Verisign and prior to completing the negotiations. These consultations continued after the documents were posted for Public Comment, including on 15 and 26 January 2020. After the closing of the Public Comment window, ICANN org reviewed, analyzed, and considered each of the 9,043 comments received. ICANN org briefed the Board in detail about the community's comments and ICANN org's analysis on each of the topics set forth in this paper on 5 March and 24 March 2020. The Board agreed that ICANN's President and CEO will

make a final decision on the proposed Amendment 3 and binding LOI as decision-making duties regarding contracts fall within the President and CEO's authority as set forth in the [Delegation of Authority Guidelines](#). The Board agreed that while the President and CEO would make the decision, he would do so in consultation with the Board, including the detailed discussions regarding the community's comments that occurred as noted above.

DECISION:

After careful consideration of the comments, and several discussions with the ICANN Board, the ICANN org President and CEO has decided to execute Amendment 3 and the LOI with Verisign as was proposed for Public Comment.

Signature Block:

By: _____

Name by: Göran Marby

Title: ICANN President and CEO

Date: 27 March 2020