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Our File No. 136395

January 12, 2018

Via Overnight Mail and Email (john.jeffrey@icann.org)

John O. Jeffrey, Esq.
ICANN
12025 Waterfront Drive
Suite 300
Los Angeles, CA 90094

Re: *RSEP for Single Character Domain Name "O.Com"*

Dear Mr. Jeffrey:

I write to follow up on my letter to you dated December 20, 2017, a copy of which is attached. I have yet to receive any response to that correspondence other than confirmation that the communication was received. As I explained in my prior letter, this firm is legal counsel for Verandaglobal.Com, Inc. d/b/a First Place Internet, Inc. ("First Place Internet"). First Place Internet is the owner of, among other registered trademarks, the registered United States trademark "1" for "Computer services, namely, providing search engines for obtaining data on a global computer network" (U.S. Reg. No. 3,618,106).

Since my last communication, we have become aware of a November 28, 2006 communication (copy attached) between Overstock.com and ICANN Board that is available publically at <https://www.icann.org/en/system/files/files/warren-to-board-28nov06-en.pdf>. Therein, Overstock.com expresses interest in the release through auction of single character domain names ("SCDNs") to "parties with established trademark or use rights in the 'name.'" Overstock.com suggested in its 2006 communication that auction proceeds go to ICANN except for "a one time per name contribution [in the form of] a percentage of the payment from the auctioned name [going] to any special/restricted funds which the Board and the community have agreed"

Overstock's communication is significant for at least three reasons. First, it seems to outline the process for the auction of "O.com" currently under consideration in the form of Verisign's November 30, 2017 RSEP. Second, Verisign's RSEP nevertheless omits a key aspect of Overstock.com's 2006 proposal, *i.e.*, mechanisms to protect trademark or use rights in "names" to be auctioned. Third, the communication raises the specter of impropriety in



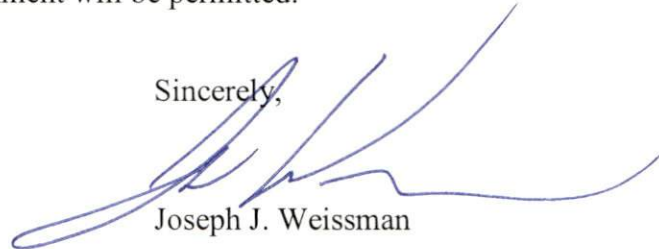
MR. JOHN O. JEFFREY, ESQ.
JANUARY 12, 2018
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Verisign's RSEP for auctioning off "O.com" in the form of a potential *quid pro quo* in which ICANN permits the registration of "O.com" in exchange for funding from Overstock.com for ICANN programs and/or ICANN-supported projects over a number of years.

This 2006 Overstock.com communication provides even more reason why the RSEP for auctioning "O.Com" should not be accepted in its current form. It is imperative that any release of SCDNs protect the rights of brand owners and be beyond reproach in terms of any appearance of possible impropriety. At the very least, we believe the content and circumstances of the Verisign RSEP for "O.com" raise the need for a public comment period. We would appreciate if you would confirm that such public comment will be permitted.

Sincerely,



Joseph J. Weissman

Enclosures

cc: Ms. Karla Hakansson, ICANN (by email to karla.hakansson@icann.org)
Mr. Thomas Indelicarto, Verisign, Inc. (by overnight mail)
Mr. Aaron D. Hoag, Esq. (by overnight mail)

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Our File No. 136395

December 20, 2017

Via Overnight Mail

John O. Jeffrey, Esq.
ICANN
12025 Waterfront Drive
Suite 300
Los Angeles, CA 90094

Re: *Draft RSEP for Single and Double Character Domain Names In .Com and .Net*

Dear Mr. Jeffrey:

This firm is legal counsel for Verandaglobal.Com, Inc. d/b/a First Place Internet, Inc. ("First Place Internet"). First Place Internet is the owner of, among other registered trademarks, the registered United States trademark "1" for "Computer services, namely, providing search engines for obtaining data on a global computer network" (U.S. Reg. No. 3,618,106). First Place Internet is also the registrant for the IDNs for "1.com" in both the Japanese (.コム or .xn--tkwe) and Korean (.닷컴 or xn--mk1bu44c) translations.

It has come to our attention through public filings that Verisign intends to auction off the single character domain name ("SCDN") "O.Com" as a trial offering for SCDNs in the .com and possibly.net domain spaces. We understand further that to date ICANN has posited no concerns regarding Verisign's RSEP for offering the "O.Com" domain through auction other than referring the matter to the United States Department of Justice ("DOJ") due to issues regarding potential competition. Through letter dated December 14, 2017, Mr. Aaron Hoag, Chief, Technology and Financial Services Section, Antitrust Division of the DOJ, indicated that the Antitrust Division does not intend to open an investigation into the proposed auction.

First Place Internet is greatly concerned that Verisign's RSEP proposal for offering "O.Com" contains no Rights Protection Mechanisms ("RPMs"). Most troublingly, the RSEP denies Sunrise Registration protection to potential brand owners. Registry operators subject to the Trademark Clearinghouse are required to offer a Sunrise period of at least thirty (30) days. See <https://www.icann.org/resources/pages/sdrp-2013-10-31-en>. To this end, Verisign offered a Sunrise period for both the Japanese and Korean IDNs of ".com". Verisign should not be permitted to offer any SCDN in .com or .net without similar RPMs.



MR. JOHN O. JEFFREY, ESQ.
DECEMBER 20, 2017
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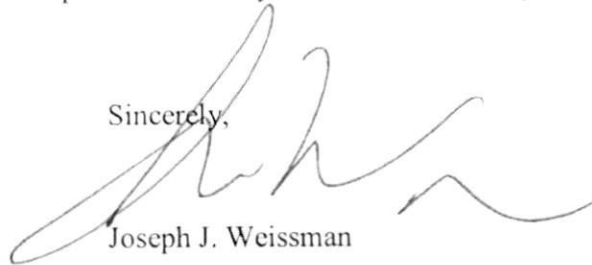
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Verisign has already committed itself to not offering marks registered to others in an IDN domain without first offering the domain to the IDN registrant. In its "Between the Dots" publication of July 12, 2013, Verisign Senior Vice-President and General Manager of Naming Services Pat Kane promised on behalf of Verisign that "a registrant of an IDN.com or IDN.net or registrant in one of our new IDN TLDs will have the sole right, subject to applicable rights protection mechanisms, but not be required to register the same second level name across all or any of our IDN TLDS, including .com or .net TLD as applicable." To make clear that this would apply to the general .com domain, Verisign included the following illustration: "John Doe registers a second level domain name in our Thai transliteration of .com but in no other TLD. That second level domain name will be unavailable in all other transliterations of .com IDN TLDs *and in the .com registry* unless and until John Doe (and only John Doe) registers it in another .com IDN TLD or in the .com registry." (emphasis added).

Although First Place Internet has no interest in the "O.Com" domain, Verisign's requested auction sets a dangerous precedent contrary even to Verisign's prior representations. ICANN recently indicated that "the release of single character .NET domain names ... would be managed via an RSEP and not the Registry Agreement Renewal Process." To this end, First Place Internet sent Verisign a proposed RSEP back on September 21, 2017. A copy of this proposed RSEP accompanies this letter. First Place Internet's proposed RSEP adopts the Trademark Clearinghouse and properly protects the rights of trademark owners. Unfortunately, Verisign has not replied to First Place Internet other than to express alleged confusion as to why First Place Internet sent its draft RSEP to Verisign in the first place.

First Place Internet respectfully requests that the RSEP for auctioning "O.Com" not be permitted, at least in its current form. It is imperative that any release of SCDNs protect the rights of brand owners.

Sincerely,



Joseph J. Weissman

Enclosure

cc: Thomas Indelicarto, Verisign, Inc. (by overnight mail)
Aaron D. Hoag, Esq. (by overnight mail)

/pt

4358446

TO: ICANN Board

FROM: CHUCK WARREN, OVERSTOCK.COM

DATE: NOVEMBER 28, 2006

Re: Proposed Release and Allocation of Single Letter Second Level Reserved Names [e.g. o.com; y.com; etc.] can Contribute to ICANN Financial Stability through Creation of Reserved and Contingency Funds; Special Projects Funding

The purpose of this memorandum is to call to your attention Overstock.com's continued interest in moving forward with a process to guide the release and allocation of single letter second level domain names, with allocation via a managed auction as part of the two existing PDP processes now under development by the GNSO Council. We would welcome the opportunity to talk with you while in Sao Paulo or before, regarding the benefits to ICANN of releasing and allocating the single letter second level names in the existing gTLD registries.

Reserved names exist in all generic top level domain names. It is our understanding that this will extend into any new gTLDs and into IDNs. Today, there are essentially four categories of reserved names. Some categories have either technical or public policy, or political sensitivities issues or implications related to release/allocation/non release ability. Of the four categories of reserved names, one sub-category – single letter second level names – has no existing technical issues and has no political issues. These names – e.g. o.com; y.com; a.com; e.com or e.net, etc. are similar to five other second level single letter names that were released earlier accidentally through registry action [NSI/now known as VeriSign]; these names are in use today; these include q.com; x.com]. In addition, some country codes allow the use of single letter second level names in their registration.

We have met extensively with the ICANN staff and the President and CEO over the last 2 ½ years and have participated in several ICANN meetings. We understand that a policy decision and recommendation by the GNSO Council is needed in order to allow interested parties, such as Overstock.com to register o.com.

During the Sao Paulo meeting, there will be several opportunities for public comment on the proposed policy processes related to contractual terms for existing and new gTLDs. We seek your interest and support for our proposal to ensure that the treatment of reserved names is included in the GNSO policy processes now underway. We have proposed draft language via the PDP

process to establish consensus policy recommendations for the release and allocation of reserved names. We are suggesting that the GNSO process create a framework for treatment of reserved names in gTLD registries, and that this direct the development of procedures to address the release and allocation of the single letter reserved names, via a managed auction process.

Our suggestion is that that the proceeds of auction of the single letter, second level names to parties with established trademark or use rights in the 'name', would go to ICANN, and be used in 1) establishing a contingency fund 2) providing a reserve fund 3) supporting, on a one time per name contribution, a percentage of the payment from the auctioned name to any special/restricted funds which the Board and the community have agreed to via the Strategic Planning process.

In having followed ICANN for two and one half years, we are aware of the importance of stable funding and reliable sources of revenue to support ICANN's core mission and key activities. And, we have noted the concerns and interest expressed by the ICANN Board to develop more distributed forms of revenue beyond the funding contributed via the gTLD registry and gTLD registrar processes. We also recognize the concerns expressed by the gTLD Registries and Registrars regarding the financial demands related to ICANN's growing budget needs, as new challenges face ICANN, including IDNs, DNSSEC, and broadening and deepening participation.

The single letter second level names, if released and allocated via a managed auction will provide a significant financial platform for ICANN that will benefit the full ICANN stakeholder community. It will allow the names to be used by legitimate entities who have shown an existing presence in the marketplace; it will provide a source of funding to ICANN in a near term timeframe; and it will help to lower the financial demands and dependencies on the funds provided through the existing processes.

Certainly, we do not foresee these funds as the replacement for ongoing efforts by ICANN to examine other forms of stable funding. However, we believe that our proposed approach will bring a considerable period of additional stable funding at a time when ICANN is facing many conflicting demands for both time and resources.

Our interest is in the single letter second level names; we fully appreciate that there are other forms of reserved names that continue to have technical reasons that prevent their allocation, or have sensitivity to their release and allocation due to public policy questions, such as names which are also geographic indicators or that are also part of the ISO 3166 list.

We are proposing that the consensus policy now underway via the GNSO's two PDP processes include a framework for policy and procedures for treatment of reserved names for the gTLD registries. We propose that each of the categories of reserved names for gTLD registries be analyzed and addressed on independent time tracks, as part of the proposed framework for reserved names and that the topic of single letter, second letter names not be further delayed.

The benefits to ICANN and to the community, and to the companies who are willing to participate in the managed auction in order to gain the rights to use the names can then be achieved. As Overstock.com has stated before, we support the concept of creating value to the fuller ICANN stakeholder community through the proposed allocation method we have put forward.

We understand that there is not an outright decision on policy in Sao Paulo, but we seek your interest and your support for advancing the policy processes, so that the single letter second level names policy and procedures can advance, and the proposed managed auction can take place in early 2007.

We respectfully ask your interest, and your support, and welcome your questions.

We will be attending Sao Paulo, and would welcome the opportunity to respond between now and then, or during the Sao Paulo meeting regarding any questions or issues that you may wish to discuss with us.

Respectfully,

Chuck Warren, Neal Blair, and Kristi Jensen-Coleman for Overstock.com