



**Via Email:** [comments-o-com-single-char-10may18@icann.org](mailto:comments-o-com-single-char-10may18@icann.org)

June 20, 2018

Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive, Suite 300  
Los Angeles, California  
90094-2536  
USA

Dear ICANN:

**RE: Release for Registration one .COM Domain Name with a Single-Character Label:  
O.COM**

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I write to you on behalf of members of the Internet Commerce Association. Founded in 2006, the Internet Commerce Association (ICA) is a non-profit trade organization representing domain name investors, website developers and related companies. The ICA is made up of responsible businesses and individuals who have joined together to improve public confidence in Internet commerce. Based in Washington D.C., the ICA's mission is to assist with the development of domain name related policy and to advocate for fairness in government policy and regulation.

ICA members own and operate approximately ten percent of all existing Internet domains on behalf of their own domain portfolios as well as those of thousands of customers. ICA is a longstanding member of the GNSO's Business Constituency

The ICA is pleased to provide its comments herein, on the Proposed Amendment to implement the approved Registry Service request from the registry operator, Verisign, Inc. ("Verisign"), to release one domain name with a single-character label, O.COM (the "Domain Name"), in the .COM generic top-level domain.

Having reviewing the [Proposed Amendment to .COM Registry Agreement](#) (the "Proposal"), the ICA is very concerned with the proposed approach.

## Background

While the ICA is in favor of the release of all single-letter .com domain names, including but not limited to O.com, the ICA is very concerned that the Proposal purports to bypass or ignore important and long-established policies and principles which have to-date enabled, supported and encouraged the .com registry in becoming the preeminent gTLD for business and consumers throughout the world.

It is crucial to bear in mind that Verisign is merely a registry operator contracted by ICANN, and is not the owner of O.com. The O.com domain name is *not* an asset that belongs to Verisign and as such Verisign is not free to deal with it as it sees fit. To the extent that O.com has any current “owner”, the owner would be ICANN itself. Unlike a new gTLD registry, which has paid for the right to take speculative ownership of a new namespace, a registry of legacy extensions, such as .com, .net, .org, .info, etc., is a backend operator entrusted by ICANN for the provision of registry services on behalf of the entire Internet community.

The Proposal purports to make substantial and radical changes to the .com Registry Agreement, and indirectly purports to justify these changes on the basis that the proceeds of the proposed auction are going to worthy nonprofits. The ICA is of course mindful of the importance of supporting nonprofit organizations, particularly those that contribute to the Internet community, however such worthy objectives cannot and must not be undertaken at the expense of ICANN’s overriding objective, which is and which must remain, the responsible management of the .com registry for all stakeholders. Accordingly, the ICA is greatly concerned about the risk of the proposed O.com auction inadvertently introducing radical changes to the general rules governing the Registry, since any such introduction opens the door to a subsequent attempt to more broadly apply these changes. By framing the release of O.com as ‘an auction for worthy causes’, attention may be diverted from the underlying and serious policy concerns which would have otherwise be foremost on stakeholders’ minds had the Proposal involved a strictly commercial auction with the proceeds going to Verisign.

The ICA therefore wants to bring to the attention of ICANN, that under no circumstances should the Proposal be accepted so long as it contains policy deviations which would be perceived as being entirely unsupportable and contrary to long-established principles governing the .com Registry, just because the direct beneficiaries of the Proposal are ostensibly, nonprofits. The fact is that Verisign, a hugely successful monopoly, has a substantial financial interest in the introduction of any new policies which could lead to it reaping even greater profits on the backs of millions of .com registrants. Extreme caution should therefore be exercised by ICANN in evaluating the Proposal with Verisign’s business interests in mind, rather than treating the Proposal solely as an altruistic exercise in benefiting worthy nonprofits from the Internet community.

With that background in mind, the ICA has the following specific comments on particular aspects of the Proposal:

1. In the apparent absence of any preferable means of allocating single character .com domain names, auction does appear to be the best method of allocation. Nevertheless, there appears to be no expressed policy rationale for having determined that the O.COM domain name alone, will be allocated by auction, in preference to other reserved single letter .COM domain names which are equally eligible for allocation in accordance with the GNSO and GNSO Reserved Names Working Group recommendations dated, May 23, 2007 (the “GNSO RN WG Recommendations”), that “single letters and digits [currently reserved] in existing gTLD’s should be released”.<sup>1</sup>

Accordingly, if the proposed auction of O.com is to be used as “a test” for the subsequent allocation of other reserved single letter .COM domain names on the same or similar basis, then ICANN should unequivocally express this as a matter of policy. Otherwise, there will be an unavoidable perception that Verisign and/or ICANN has made its own determinations as to which single letter .COM domain names will be allocated and when, rather than on the basis of a Policy Development Process involving all stakeholders. The release of a particular single-letter .com domain name must not be permitted to depend on which private company has most successfully lobbied for its release.

If however, the release of the O.com domain name is to be a pilot for the subsequent release of all other available single-letter .com domain names, then subject to further comments and stakeholder input, ICANN and Verisign should move expeditiously to allocate all remaining single letter .COM domain names on a uniform basis. Under no circumstances however, should any deviations from established .com Registry policy which may be included in such a pilot, be permitted to be subsequently considered or extended to all .com’s generally.

2. The proposed amendment to the .COM Registry Agreement at Section 8.2(ii), states that, “Notwithstanding the ICANN Transfer Policy, following its initial registration, o.com shall not be transferred to another registrant, except to another registrant who has acquired all or substantially all of the assets of such registrant”. This is a very problematic departure from existing policies, apparently without any articulated justification.

It has been the longstanding policy that any .com registrant can sell or lease a .com domain name, without restriction, and this principle should not be deviated from. The purchase of a single-letter .COM domain name pursuant to any allocation method established by ICANN, should not prejudice or interfere with the purchaser’s economic right to exploit its acquired asset, including but not limited to its right to transfer or assign such rights as it sees fit, having paid for such rights. As noted in the [Single-Character Second-Level Domain Name \(SC SLD\) Allocation Framework](#), single letter .COM domain names are scarce and that “this scarcity creates value, which in turn creates a market where value can be realized”.<sup>2</sup> Single letter .COM domain names may be amongst the most scarce and valuable of domain names, and should be tradeable as any other scarce and valuable asset, without any unjustifiable impediments or restrictions.

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<sup>1</sup> See; [ICANN Synthesis on Single-Character Domain Names at the Second-Level](#) , February 27, 2008.

<sup>2</sup> See Note 4 therein, namely, "An Economic Analysis of Domain Name Policy," Hastings Communication and Entertainment Law Journal (2003) (by Karl M. Manheim and Lawrence B. Solum) (see <http://law.bepress.com/sandiegolwps/le/art1>), p. 414.

The ICA can see no meritorious justification for this unprecedented rule change. If the ostensible justification is that the successful bidder should remain liable for “premium renewal fees” and to be obliged to continue a certain specified use of the domain name, the ICA opposes those two particular proposed rule changes, as detailed below, and they should not form part of the allocation parameters. Alternatively, if the ostensible justification is to keep the successful bidder on covenant to the special terms of the allocation, then that can be achieved by requiring the successful bidder to remain jointly and severally liable with the successor in interest, much the same way a tenant is able to sublease premises while remaining liable to the landlord.

3. The O.COM Service Description attached to the proposed Amendment to the .COM Registry Agreement proposes that ‘Verisign itself’ will select a third party auction service provider to manage the auction. We note that this proposed approach apparently does not take into account the importance of retaining a trusted and appropriate auction design consultant, which was expressly recognized in the [Single-Character Second-Level Domain Name \(SC SLD\) Allocation Framework](#). Because this is the first proposed such auction in the .COM registry, it is of utmost importance to design and implement an auction which is not only fair, but perceived as fair, and such a task should not be left up to the registry alone to determine. It is therefore recommended that ICANN, following community stakeholder input, retain *its own* consultant as contemplated in the [Single-Character Second-Level Domain Name \(SC SLD\) Allocation Framework](#), and that this consultant be the party which designs and implements the auction – not Verisign, so as to avoid issues and complaints of unfairness or perceived unfairness in the auction procedure.

4. Arguably, the greatest concern with the Proposal, is that aside from the winning auction bid, the winning bidder will also be required to pay renewal fees which in essence amount to purported “premium renewal fees”. As outlined in the Proposal, the winning registrant will not only have to pay the winning bid, but will also be required to pay 5% of the winning bid for each renewal of the registration beyond the first five years of registration. As set out in the Proposal by way of example, if the winning bid is \$10,000 in 2020, the registrant would also have to pay \$500 for each year after year 5, i.e. after 2026 onwards.

This is a substantial and concerning departure from the usual policy regarding renewal fees. Renewal fees for .COM domain names uniformly correspond to the original registration fee, with absolutely no provision for the registry charging a premium for renewals. Although it is recognized that an auction for the allocation of a single letter .COM domain name may be the best approach in the absence of any preferable approach, there is no reason that the auction must also include a provision for charging the registrant any sums beyond the usual registration fee for renewals. Accordingly, it is recommended that the winning bidder pay the winning bid for the registration rights to the O.COM domain name, but only be required to pay the regular registration fee for any subsequent renewals, and not a “premium” renewal fee, so as to avoid any unjustified and undesirable precedent.

The ICA can see no justification for any such “premium renewal fees”. There is no basis for concluding that “premium renewal fees” would result in any greater proceeds for the nonprofit beneficiaries. A successful bidder would be able to pay a greater amount upfront instead of staggering the payments over years. Furthermore, by frontloading the payments into a single

upfront payment as opposed to levying periodic “premium renewal fees”, a successful bidder would have to have all the required funds immediately and readily available, thereby eliminating the risk of subsequent default of payment of “premium renewal fees”. Ostensibly, those wishing to provide the greatest and most secure benefit to the nonprofit beneficiaries, would be opposed to “premium renewal fees” on that basis alone. Moreover, any perceived benefit to the nonprofit beneficiaries occasioned as a result of the implementation of “premium renewal fees”, should in the ICA’s view, be far outweighed by the potential damaging precedent established by such an approach. If subsequently used a precedent, the levying of “premium renewal fees” by the .com Registry, ostensibly depending on how “premium” a domain name is determined to be by the Registry operator, can only lead to increased fees payable by registrants and to even greater monopolized profits through a new revenue stream that becomes available, and this is ultimately harmful to the Internet community.

In 2006 the .biz and .info registries proposed the right to charge higher renewals depending on the "value" of a domain. This was an attempt by the registries to grab for themselves, value in name spaces which they did not create, that they did not pay for, and that largely resulted from the registrants themselves creating value in the domains through their business use. The proposal by the .biz and .info registries to incorporate premium priced renewals in their registry agreement met with strong opposition (<https://forum.icann.org/lists/biz-tld-agreement/>) and was rejected.

The work involved in renewing [apple.com](http://apple.com), [facebook.com](http://facebook.com), [disney.com](http://disney.com) or any other domain is the same as for every other domain. Establishing premium renewal rates for O.com creates a precedent for Verisign to charge higher renewal rates for other valuable domains. If Verisign were given free rein to offer variable renewal pricing, they could price the renewals of the domains associated with the most valuable brands at \$1 million per year knowing that the domains would still be renewed. Accordingly, .com registrants, large and small alike, should be adamantly opposed to inadvertently creating any precedent through the O.com allocation, which could be harnessed by Verisign to start charging any fees above the regular registration and renewal costs. There has never been variable renewal pricing in the legacy extensions, and there is no need to introduce it through the back door of the O.com release. It is cleaner and preferable for the bidder to pay a one-time fee, and then O.com can renew at the same rate as all other .com domains.

5. The Proposal contemplates that the third party auction service provider (who is to be selected unilaterally by the registry operator itself, as aforesaid), will be entitled *in its discretion* to “pre-qualify” potential registrations, and that this procedure may involve not only demonstration of the ability to pay for the domain name, but also “documentation describing the planned marketing and usage of the registered domain name”.

Aside from determining the ability bidders to pay for the winning bid, which is reasonable, justifiable and not uncommon for high value auctions of assets, there appears to be no discernable justification for a third party auction house *using its own subjective and indeterminate discretion* to review and evaluate who is entitled to be a bidder. Such an approach leads to concerns as to what qualifies a third party auction house to make such important

determinations, and also what justifies any such qualitative review process being implemented as a qualification for registering a .COM domain name.

Such a purported “use test” is incompatible with the 20-year history of how legacy domains have been allocated. To the extent that “use tests” were incorporated into the release of previous single-letter domains, such criteria was ill-advised and does not survive further scrutiny.

While a “use test” may ostensibly be considered by some as a way to prevent speculators from "swooping up" the single-letter domains, some of the largest holders of inactive domain names are large corporations. These domains are often defensive registrations, or came with an acquisition of another company, or are reserved for future projects. For instance, LALA.com, owned by Apple.com, is not an active website, nor is Glory.com, owned by Microstrategy, nor is IVI.com owned by WebMD. All were targets of UDRP complaints by trademark holders asserting that these companies were not entitled to own the domains due to their lack of use. Advancing a position that those with a current use for a domain have a greater right to a domain name than those who have other reasons for owning the domain would undermine the ability of corporations to maintain portfolios of inactive yet strategically important domain names. If a company wishes to acquire O.com for defensive purposes, or to have it on hand for possible future development but the company has no immediate plans to make use of the domain, it is unduly restrictive to prevent such a company from bidding on O.com, provided that they have the ability to pay for the successful bid.

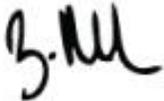
The ICA can see no viable justification for the implementation of a “use test”. Some may incorrectly believe that ascertaining and identifying an “acceptable use”, however measured, would lead to more stable and greater proceeds to the nonprofits. The fact is however, that the appointed auction house is in no position to make such a determination. Moreover, the best method for providing the greatest financial benefit to nonprofit recipients, is to award the domain name to the highest bidder, regardless of whether the bidder uses or does not use the domain name, and regardless of how it proposes to use the domain name, provided that all usual and applicable policies and laws are adhered to, just like with any other .com domain name. Lastly, there is no reason to attempt to ‘showcase’ the .com Registry by awarding the O.com domain name to a candidate who the auction house believes will gain positive attention for .com’s. The .com domain name continues to be the overwhelming favorite amongst all gTLD’s as shown by Verisign’s own most recent [Industry Brief](#). The ICA therefore strongly opposes sacrificing the long-established neutrality of use in exchange for an unnecessary purported ‘showcase’.

6. The Proposal contemplates unspecified fees being paid to both the third party auction services provider as well as the Trustee. There is a concern that without details about the nature and amount of such fees, that the proceeds of the auction will be directed to these service providers in amounts that the ICANN community may find objectionable or unnecessary. Accordingly, it should not be left to the registry operator alone to determine the amount of appropriate fees, or that such fees be determined solely by the service providers themselves, but rather should be set out as part of the Proposal so that stakeholders can provide input into the proposed fee arrangements. This becomes even more important when it is recognized that the proceeds are intended to go to worthy causes, rather than to service providers, to the greatest extent possible.

7. The Proposal contemplates that the proceeds of the auction are to be directed to “one or more nonprofit organizations” to be included on a confidential list. This list is apparently only going to be known to the registry operator and to ICANN, without any disclosure to the winning registrant or to ICANN stakeholders. Although it is expected that such nonprofit organizations will be worthy of receiving the proceeds, several concerns become evident as a result of this provision of the Proposal. First, a winning bidder arguably would want, and is entitled to know, who the ultimate beneficiary of its funds is. Second, since such nonprofit organizations will inevitably be part of the Internet community given that the funds are to be directed to organizations whose mission is targeted towards the “public good of the Internet community”, there is the potential for the perception by some within the community, that the registry operator will have indirectly benefited by becoming the benefactor of one or more organizations within the ICANN community, since such organizations could become, or be perceived to become, beholden to or indebted to the registry operator. Third, the identification of worthy nonprofits is something that is important enough that all stakeholders be given an opportunity to provide input, rather than leaving it up to ICANN and the registry operator alone. As a result of these concerns, it is recommended that alternatives to the proposed funding model be explored, which better avoid potential controversy.

Yours truly,

**INTERNET COMMERCE ASSOCIATION**



Per:

Zak Muscovitch

Interim General Counsel, ICA