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Dear Sirs:

Re: NTIA and the .COM Registry Agreement

I write to you on behalf of members of the Internet Commerce Association. Founded in 2006, the Internet Commerce Association (the “ICA”) is a non-profit trade organization representing domain name investors, domain name secondary marketplaces, domain name brokers, escrow service companies, registrars, registries, and related service providers.

As you are aware, the National Telecommunications and Information Administration (NTIA) recently [announced](#) that it and Verisign had “agreed to extend and modify” the [Cooperative Agreement](#) “in line with policy priorities of the Trump Administration”. This resulted in [Amendment 35](#) to the Cooperative Agreement, which amongst other concerning provisions, stated that, “Verisign and ICANN *may* agree to amend Section 7.3(d)(i) (Maximum Price) of the .com Registry Agreement to permit Verisign...to increase the Maximum Price up to seven percent” annually in each of the least four years of every six year period, beginning in two years’ time.

You will note my emphasis added on the word, “may”. NTIA expressly acknowledged in its Press Release regarding Amendment 35, that Amendment 35 merely “*permits Verisign to pursue* with ICANN an up to 7% increase in the prices for .com domain names”, but it does not of course, compel ICANN to agree to any such increases. Any such decision regarding .com pricing remains with ICANN.

In our view, and in view of many ICANN stakeholders and community members, of which [nearly 2,500 have signed a Petition](#) against any price increases, ICANN should reject any attempt by Verisign to increase its fees. Higher fees for Verisign are not justified, as demonstrated by the following four key points:

- a) Verisign is a provider of technical registry services, it does not own the .com name space;
- b) Verisign’s fees are not constrained by significant competition;
- c) Verisign is already well-paid for its services, as evidenced by its substantial profits;¹ and
- d) ICANN need not approve fee hikes; on the contrary ICANN ought to assert its right to set reasonable fee levels for its hired registry manager.

Verisign is a Manager, Not the Owner of the .com Registry

Operating a database in a reliable and secure fashion is the primary job of a domain name registry, and by all accounts Verisign has done that well. ICANN, the ultimate owner of the .com registry on behalf of all stakeholders, contracted with Verisign to operate the registry as a service provider. ICANN did not relinquish ownership of the .com name space to Verisign.

The role of a domain name registry manager is comparable to that of a land registry manager. The registry manager, whether the registry is for land or for domain names, is entitled to a fee – nothing more. Verisign is not entitled to treat the .com name space as its corporate asset, any more than the land registry manager is entitled to treat the land that it enters into its records as its own. The wholesale price² of domain names accordingly is not a matter for the manager to

¹ See; <https://domainnamewire.com/2018/09/11/verisign-cooperative-agreement/>

² The wholesale price is the price that registrars pay.

determine, and its fees should never be equated with the wholesale price which is a determination that should be exclusively made by the owner of the name space.

In 2006, following a lawsuit brought by Verisign against ICANN, ICANN granted Verisign the .com registry management contract with a purportedly ‘presumptive and perpetual right of renewal’. This agreement was and remains, quite controversial, as it is clear to many observers that it is extremely one-sided in Verisign’s favor.³ Yet while the ICANN Board granted Verisign what many considered a sweetheart deal to operate the .com registry,⁴ Verisign’s role continues to be that of a manager, not an owner. The .com name space, as one of the original legacy extensions, is therefore fundamentally different from a new gTLD which is created and paid for by a private company. When it comes to the .com registry, whose existence pre-dates Verisign’s involvement, it is the ICANN community as the owner which is entitled to set fees, not its hired manager.

Verisign’s Fees

Verisign is entitled to a reasonable fee for running the registry on behalf of ICANN. Verisign currently charges **\$7.85 per .com domain name per year**. The cost to operate the registry, after taking into account the expensive infrastructure necessary to provide reliable and secure operations and high overhead, has been estimated at **\$1.00⁵ to \$3.50⁶ per domain name per year**.

If the proposed fee increases go into effect, by the end of the six-year agreement term, the fee for each .com domain name will increase to \$10.29 per year, a 30% jump from current levels.⁷ Even conservatively assuming that in six years’ time there are only 140 million .com domain name registrants instead of the current 138 million, that increase of \$2.44 per year, per domain name, would result in **\$341,000,000 more revenue** for Verisign per year. Bear in mind, that without any price increase and as things already stand now, Verisign, has a **market capitalization of nearly \$19 billion dollars** and had **net income in 2017 of US \$457 million on revenue of \$1.14 billion⁸**. Making things even more remarkable, is that Verisign currently enjoys an incredible operating margin of **60%⁹**.

Despite benefiting from the economies of scale from operating the largest domain name registry together with the .net registry, Verisign already charges far more for its registry services than other registry operators. For instance, as reported by [Domain Name Wire](#), a recent bid to manage the registry for India’s .in domain name was made by Neustar at just 70 cents per domain name per year, and registry operator Afilias offered to run it for \$1.65 per domain name per year. Apparently other qualified operators could manage the .com registry for far less than

³ See; <https://www.zdnet.com/article/icann-board-approves-settlement-price-hikes/> and https://www.theregister.co.uk/2006/03/01/dotcom_contract_approved/

⁴ See for example, <https://www.internetcommerce.org/slashdotcompricing/>; and also see <http://www.dnjournal.com/articles/icann-verisign.htm>

⁵ See; https://www.theregister.co.uk/2018/11/02/dotcom_domains_pricing/

⁶ See <https://domainnamewire.com/2018/09/11/verisign-coperative-agreement/>

⁷ See; https://www.theregister.co.uk/2018/11/02/dotcom_domains_pricing/

⁸ See; <http://stopthepriceincreaseof.com/>

⁹ *Ibid.*

the \$7.85 per domain name per year that Verisign charges, resulting over time in billions of dollars in cost savings to the registrants of the approximately 138 million registered .com domain names.¹⁰

The owners of other name spaces, in particular the authorities in charge of certain national domain name (ccTLD) extensions, are not shackled by a one-sided agreement that gives one company the purported right to manage their registries in perpetuity. These authorities have more flexibility in their arrangements with their registry operators, including the right to open the registry management contract to bid and the right to replace their registry manager. When the .fr authority put the .fr registry contract out for bid it resulted in lower fees to run the registry,¹¹ while open bidding for the management of the .au registry resulted in a change of registry operator and expected cost savings.¹²

You, as leaders of the ICANN community, now have the benefit from knowing the results of competitive bids to run other registries. Although Verisign may have a presumptive right of renewal, it does not have a presumptive right to set its own compensation. ICANN can and should negotiate with Verisign to set the fees for operating the .com registry at the reasonable market-determined level for these services, i.e. profitable for the manager, but not exceedingly so. The fees which Verisign currently charges appear to be far higher than what the market would determine and certainly raising them even further from their already high levels, would be entirely unjustified.

Verisign is Not Entitled to Take Entire Credit for .com's Success.

The .com extension was widely adopted as the *de facto* address for the commercial Internet long before Verisign was awarded the privilege of operating the .com registry. In the United States, the vast majority of the top commercial websites use .com domain names. The billions of dollars spent by companies promoting their .com websites has firmly entrenched .com in the minds of consumers as the pre-eminent and most sought after Internet extension. Verisign ought not to reap outsized rewards which are disproportionate to its role as an effective and competent manager.

Registrants Would Have Little Choice but to Pay Higher Fees

If a business that is already established on its .com domain name is unhappy with higher renewal fees, moving to a different domain name would be highly disruptive and expensive, if not entirely impractical. All of the prior advertising promoting a business' .com domain name, all the existing links, and all its email addresses, would need to be changed. All the goodwill that a company had developed around its .com brand would be lost. Verisign therefore benefits from having a substantially "captive market" that is generally forced to absorb any and all fee increases which Verisign decides to impose. Accordingly, there should be no consideration of

¹⁰ See; https://www.verisign.com/en_US/channel-resources/domain-registry-products/zone-file/index.xhtml?dmn=zone&loc=en_US

¹¹ See; <https://www.thedomains.com/2012/08/07/afnic-awarded-new-contract-to-run-fr-registry-but-only-after-open-bidding-results-in-reduced-prices/>

¹² See; <http://domainincite.com/22393-shocker-after-15-years-afilias-kicks-neustar-out-of-australia>

any increase in .com registry management fees in the absence of clear and compelling justification for raising them on a substantially captive market.

.Com Registry Fees Are Not Constrained by Competition

Because of the unique role .com plays in the Internet Economy, the availability of other extensions is not sufficient to constrain .com registry fees. The .com extension enjoys a dominant position as the brand extension for much of the commercial Internet. Most of the world's best-known companies and most heavily-visited websites operate on a .com domain name. This has created an expectation in the minds of consumers, especially in the United States, that a business website will be found on a .com domain name.¹³ Globally, .com has also become the preferred extensions for companies operating internationally, as unlike country code extensions, it is not tied to any one particular country. Indeed, as Verisign's own marketing proclaims, .com is "revered as the global online standard".¹⁴

In part because .com offers unique branding value, it does not face effective competition. If it were the case, as NTIA appears to claim, that lifting the fee freeze is justified due to the development of a "more dynamic DNS marketplace",¹⁵ one would reasonably expect that such purported genuine competition would compel Verisign to *lower fees, not raise them*.¹⁶ Yet even the availability of hundreds of other new domain name extensions, often available for far lower registration and renewal fees than .com, has had little significant impact on the continuing and burgeoning demand for .com domain name registrations.¹⁷

It is therefore misguided to believe that market forces will naturally constrain fees to register or renew .com domain names. The .com extension offers unique benefits, and those desiring those benefits can only obtain them by selecting a .com domain name.¹⁸ Furthermore the large installed base of .com websites have little choice but to pay whatever fee is charged to renew their domain names, regardless of whether that fee has any bearing on the actual costs incurred by Verisign in running the .com registry. If Verisign is wrongly permitted to act as the *de facto* "owner" of the .com name space, it will be able to seize for itself the windfall profits that come from controlling a monopoly on the largest, most lucrative and most dominant name space that has evolved on the Internet.

Conclusions

As NTIA makes clear, it is up to Verisign to request a fee increase and ICANN that may agree or disagree. ICANN should not agree. Indeed, it would be a dereliction of ICANN's responsibilities

¹³ "buying an exact .com domain makes finding your website much easier for customers and lends invaluable prestige to your company." (See; <https://catchwordbranding.com/catchthis/naming-tips/your-websites-url-an-expensive-com-domain-name-or-these-creative-alternatives/>)

¹⁴ See; https://www.verisign.com/en_US/domain-names/com-domain-names/index.xhtml

¹⁵ See; <https://investor.verisign.com/static-files/37bfa1fd-7868-49ad-a060-fb6f25d5b3be>

¹⁶ For another perspective on the dubious rationale for lifting the fee freeze see: <http://domainincite.com/23641-trump-gives-verisign-almost-1-billion-in-free-money>

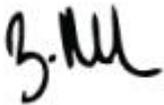
¹⁷ See; https://www.verisign.com/en_US/domain-names/dnib/index.xhtml

¹⁸ "The problem with not having the .com of your name is that it signals weakness... a marginal domain suggests you're a marginal company." See; <http://paulgraham.com/name.html>.

to the ICANN community if Verisign were permitted to raise its fees when it is already very well paid for the services which it provides.

ICANN as the ultimate “owner” of the .com name space can and must fulfill its responsibilities to its stakeholders and the wider Internet community, by protecting registrants from unjustified fee increases.

Yours truly,
INTERNET COMMERCE ASSOCIATION

A handwritten signature in black ink, appearing to read "Z. Muscovitch".

Per:
Zak Muscovitch
General Counsel, ICA