



Via Email: globalsupport@icann.org

April 10, 2019

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, California
90094-2536, USA

Attn: Mr. Russ Weinstein, Global Domains Division

Dear Mr. Weinstein:

Re: Proposed Renewal of .org 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 registrants, including domain name investors, domain name secondary marketplaces, domain name brokers, escrow service companies, and related service providers. The ICA’s mission is to assist with the development of domain name related policy. ICA members own a substantial percentage of all Internet domains and provide crucial domain name-related services to millions of Internet users.

We are pleased to provide herein, our comments on the Proposed Renewal of the .org Registry Agreement (the “Proposed .org Renewal Agreement”).

1. **ICANN Once Again Circumvents Dedicated Volunteers When it Comes to URS and So-Called “Bottom-up Multi-Stakeholder” Policy Development**

ICANN prides itself on bottom-up multi-stakeholder policy development, but yet again, ICANN staff has attempted to circumvent the established policy development process. The Proposed .org Renewal Agreement includes Uniform Rapid Suspension (“URS”) when ICANN Staff are well aware that the question of whether URS should become a Consensus Policy is currently undergoing extensive review by the Rights Protection Mechanism Working Group (the “RPM

WG”). In fact, the question of whether URS should be applicable to all gTLD’s as a Consensus Policy is one of the primary questions that numerous experts from the ICANN community have been engaged in for the last two years. These experts have dedicated thousands of person hours to determining whether URS should be a Consensus Policy and yet ICANN Staff has purported to circumvent them and render all these efforts largely moot with the unilateral implementation of URS in registry agreements as they come up for renewal.

It is an affront to the ICANN Community, and in particular to those dedicated volunteers that are following the established policy development process, that right under the noses of the ICANN Board, ICANN Staff continue to subvert and circumvent the required procedures by unilateral implementation of policy. This is at least the 7th instance where the Global Domains Division (“GDD”) has circumvented the policy development process by unilateral introduction of the URS and ICANN has been put on notice through Comments by various parties on each occasion.ⁱ

The question then becomes whether there is any point in continuing to engage in the established “bottom-up multi-stakeholder model” if efforts from volunteers, included members of the Internet Commerce Association, are ostensibly engaged in mere “busy work” at tremendous expense and opportunity cost, when the actual policy making happens behind closed doors by ICANN Staff.

Given that ICANN Staff has ignored all previous entreaties to abide by the established policy development procedure when it comes to URS, it must be concluded that ICANN pays mere lip service to the bottom-up multi-stakeholder model and putting the Proposed .org Renewal Agreement out for public comment is mere window dressing.

Nevertheless, once again, and despite every indication that ICANN Staff remains intent upon continuing their unilateral policy making mission and circumventing its dedicated volunteers, we must demand that ICANN await the completion of the Working Group’s deliberations on the inclusion of URS as a Consensus Policy and refrain from unilateral imposition.

2. **Does ICANN Care About Non-Profit Registrants and the Public Interest?**

We are very troubled by the what appears to be ICANN Staff’s complete disregard for registrants and the public interest when it comes to the removal of all price caps in the Proposed .org Renewal Agreement.

The .org registry is one of the original top-level domains, established in 1985 along with .com, .us, .edu., .gov, .mil, and .net, and has grown to become the third largest gTLD registry comprising more than 11 million registrations and 6.4% of all gTLD registrationsⁱⁱ.

According to Public Interest Registry, the current .org registry operator under contract with ICANN, “since its inception in 1985, org has empowered and mobilized over 10 million websites, serving as a reliable online venue for organizations, companies, clubs, and individuals to communicate with their core audiences about a shared interest, passion or cause”. As such, the

.org gTLD has a unique and crucial place in the name space for millions of non-profit organizations who have invested in their .org web presence and rely upon the continued affordability of their .org domain name.

Non-profit organizations all over the world who rely upon .org, include the American Cancer Society (Cancer.org), Wikipedia (Wikipedia.org), Unicef (Unicef.org), Children International (Children.org), Save the Children (SaveTheChildren.org), and millions more, including much smaller organizations, non-profits, and charities started by individuals established to raise awareness and assist with various causes in the public interest.

The .org registry operator itself, Public Interest Registry, as its name implies, and as it expressly states, “serves the public interest” as a not-for-profit organization created by the Internet Society (InternetSociety.org), a non-profit organization that is a “global cause-driven organization” that is “dedicated to ensuring that the Internet stays open, transparent and defined by you”.

Accordingly, the .org registry holds a special place in the namespace; it is primarily and specifically used by non-profits and similar public interest organizations, and thereby is substantially different in character both in relation to primarily commercial legacy gTLD’s such as .com, and in relation to new open gTLD’s such as .xyz and .dev, which were essentially created, bought, and paid for by commercial enterprises relatively recently, and which do not have an established mandate or registrant base dedicated to non-profit activities.

Moreover, the new gTLDs created entirely new namespaces where any registrant knew that they were subject to price changes and price increases at the whim of the new gTLD operator. It was clearly ‘buyer beware’ in the new gTLDs. In contrast, with legacy extensions such as .org, the name spaces were not bought and paid for by the registry operator and the reasonable expectation of .org registrants was that prices would be capped in order for pricing to remain stable and reasonable, particularly having regard to the nature of the namespace which is expressly and decidedly not commercial in nature. The operators of legacy extensions such as .org don’t “own” those name spaces. They were created for the public at large and are to be administered in the public interest by ICANN as essentially a trustee. The contracted registry operators are merely providing a service of maintaining the database and the underlying infrastructure on behalf of ICANN which is the caretaker of the public interest in the name spaces.

That is why it is so surprising and concerning that ICANN Staff expressly stated that the ostensible objective in removing the price caps on .org registrations under the existing Registry Agreement, was to “align” it with the current “base registry agreement”. First of all, the crucial problem with this purported “alignment” is that in effect it constitutes a fundamental policy making initiative that is beyond the scope of ICANN Staff without the support of the established policy development process. Second, this purported “aligning” totally disregards the fact that .org is a unique legacy registry that caters to non-profit and similar organizations, in the public interest, Although “alignment” may be convenient from an administrative perspective, there is no factual or legitimate policy basis for treating the .org registry the same as all others, when it is clearly different and clearly unique, with millions of non-profits and similar organizations who

are already established and ones which are yet to be established in the future, all relying upon a distinct domain name space that is geared towards their specific needs. So, other than conveniently “aligning” registry agreements to purportedly treat all registries alike despite their respective and dramatically different mandates, registrant base, and histories, what justification is there for unlimited price increases? There is no evidence whatsoever that the .org registry requires unlimited additional funds to maintain reliable operations. There is no evidence that the .org registry requires unlimited additional funds to finance the good works of the Internet Society. There is no evidence that the .org registry needs unlimited funds in order to “compete” with other for-profit registries, particularly when the current operator, PIR, is a not-for-profit organization. In short, there is simply no justification for permitting the .org registry operator to raise prices at all, let alone with a sky-is-the-limit approach.

What would the effect of a 25% price increase on the current \$9.05 wholesale cost be on the more than 11 million .org registrants? It would raise an additional \$2.26 per domain name, for a windfall of nearly \$25 million in a single year. Over 10 years, such a raise would amount to nearly \$250 million – in additional, new money on top of the already satisfactory and lucrative \$9.05 that the registry currently charges. What would a 100% price increase look like? It would likely mean a nearly \$100 million additional profit in a single year alone, and nearly \$1 billion over the course of ten years.

And who would be responsible for paying? Of course, it would be the 11 million .org registrants, many of which are charities and non-profit organizations working in the public interest. In other words, there would be a massive, unjustified transfer of money from charities and non-profits to a contracted registry operator, paid for with charitable donations and membership dues from charities and non-profits. This is not to begrudge PIR, which we have immense respect and admiration for and which is run in an exemplary fashion whereby it is fortunately able to fund the good works of the Internet Society. Rather, we find it incomprehensible and entirely unjustified that ICANN would decide to fund one particular non-profit working for the public interest on the backs of millions of others.

ICANN should also be especially cognizant of the fact that millions of charities and not-for-profits who may not be paying close attention to the .org domain name contract renewal negotiation, and have implicitly placed their trust in ICANN to look after them. Even if a price hike were only a couple dollars per year for a charity or non-profit, an increase which of course is generally “affordable”, across millions of organizations this collectively amounts to a massive sum, and it is ICANN which is exclusively in the position of being entrusted for looking at the collective amount being charged and must justify it to itself and to the public. The public interest in the .org registry must be looked after by someone, and that someone is ICANN.

Moreover, the millions of .org registrants can’t simply pick up and move to a different domain name if prices are jacked up. For example, a charity or non-profit who chose to “build a home” in .org and who invested heavily in web development, branding, and marketing all connected to the .org extension, did so with the reasonable expectation that ICANN would ensure, as the trustee of the .org registry in the public interest, that reasonable prices would be maintained. If a non-profit .org registrant is faced with a substantial price increase for renewing their domain name they would have little choice but to pay it or face the potentially even greater costs of

moving locations, rebranding, and remarketing, not to mention to potentially massive issue of losing their original email address. Similarly, if a new non-profit rightly wants to take its place in the most suitable namespace for such organizations, and is met with a totally unjustifiable and expensive registration fee, it will force them to take their place in another less suitable registry. As such, existing registrants are a captive audience with little practical means of avoiding a registry-imposed price hike, and prospective non-profit registrants would be hugely disadvantaged if the price of a .org became unaffordable.

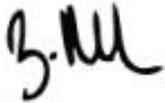
Of course, it may be argued that ‘just because ICANN has permitted the .org registry to jack up prices in an unlimited fashion, doesn’t necessarily mean that the registry will’. Certainly, there has been price stability to-date because of the justifiable ICANN-imposed price caps, and the current registry operator has not always raised prices within the limits, even though they were permitted to do so pursuant to their existing Registry Agreement. Nevertheless, the Proposed Renewal Agreement takes all pricing caps off the table so that if the registry operator were to decide for one reason or another to take an entirely different pricing approach than it has to-date, such as jacking up prices by 100% even if it meant losing 20% of its existing registrant base and thereby garnering an even larger net profit despite the rise in prices, it would be ICANN that is left to explain how it could possibly have permitted its registry operator to act so oppressively and self-servingly in its operation of a fundamentally public resource that is supposed to be managed in the public interest.

Even if such a contingency is unlikely, the question becomes why permit it at all. By altogether eliminating all price caps, ICANN is exposing itself to untold disaster to one of its most cherished and relied upon gTLD’s merely because it wants to unjustifiably “align” the .org registry agreement with totally different commercial ones. Clearly the more prudent policy approach is to prevent such a contingency in the first place rather than leave it entirely up to the hired registry operator to “do the right thing”. The .org registry is simply too important to be permitted to be the subject of its operator’s discretion, even if well meaning. ICANN, as the ultimate trustee of it, must not entirely abdicate its crucial fiduciary responsibility to a contracted party who may at some point in the future, act in its own best interest instead of the public’s best interest. Only ICANN can be responsible for the public interest in the .org registry.

It can also be argued that existing .org registrants are somehow “protected” because they can renew their .org domain name for ten years before being subjected to uncapped price hikes under the Proposed Renewal Agreement. The fact is however, that there is no requirement that registrants be expressly notified that they had better register for ten years in advance or be subject to unknown, indeterminate, and potentially game-changing renewal costs. As such, it is likely that millions of charities and non-profits will not take advantage of the ability to renew for ten years. Secondly, and perhaps more importantly, there is simply no justification for compelling the 11 million .org registrants to pay to PIR, the aggregate of ten years’ worth of fees in advance resulting in a massive cash infusion to the registry operator. Thirdly, once caps are removed, once the initial ten-year period has elapsed, every single registrant is subject to untold, indeterminate, and potentially substantial price hikes, meaning that this is nothing but a temporary reprieve. Lastly, the numerous prospective .org registrants who want to establish themselves in the most appropriate registry for a charity or non-profit at some point in the next ten years, could find themselves subject to capricious and expensive registration fees for .org domain names and as such receive no benefit whatsoever from the temporary reprieve.

The removal of all pricing caps would come with little or no notice to .org registrants, and with no assurance whatsoever that they would not be continuing to build their web presence in a namespace that could be effectively taken away from them one day based upon arbitrary and unpredictable price hikes by a contracted registry operator without any ICANN-imposed restrictions on pricing. If all price caps are to be removed for some unjustified reason, then at very least, ICANN should insist that the registry operator irrevocably undertake to not raise prices beyond an agreed amount for the duration of the term of the agreement. In that fashion at least, the registry agreements would be “aligned” but registrants would have the certainty and predictability of reasonable pricing, which is crucial particularly in a namespace dedicated to public interest endeavors.

Yours truly,
INTERNET COMMERCE ASSOCIATION



Per:
Zak Muscovitch
General Counsel, ICA

ⁱ See for example “Comments Run Overwhelmingly Against ICANN Staff Attempt to Impose URS on Legacy gTLD’s, June 22, 2015 (<https://www.internetcommerce.org/comments-oppose-dottravel-urs/>); see also “Comment on Proposed Renewal of .Coop Sponsored Registry Agreement, Business Constituency Submission, July 27, 2018 (https://www.bizconst.org/assets/docs/positions-statements/2018/2018_07July_27%20BC%20Comment%20on%20COOP%20Sponsored%20Registry%20Agreement.pdf); See also: “ICA Files ICANN Comment on Proposed .Museum RA Renewal”, October 22, 2017 (<https://www.internetcommerce.org/ica-files-icann-comment-on-proposed-museum-ra-renewal/>).

ⁱⁱ See; <https://domainnamestat.com/statistics/tldtype/generic> (March 29, 2019)