



Via email: registry@nixi.in; ceo@nixi.in;
legal@nixi.in; rajiv@nixi.in and
shubham@nixi.in

July 11, 2023

National Internet Exchange of India
9th Floor, B-Wing,
Statesman House, 148,
Barakhamba Road, New Delhi
110 001

Attn: Mr. Shri Anil Kumar Jain, CEO

Dear Mr. Jain:

RE: Draft Amendments in Terms and Conditions for Registrants

This letter is in response to your request for feedback on the draft amendments to the terms and conditions for registrants as proposed on your website.¹

I write to you on behalf of the Internet Commerce Association. Founded in 2006, the Internet Commerce Association (the “ICA”) is a non-profit trade organization headquartered in Washington, D.C.

We represent the thriving industry that has developed around the independent value of domain names in this Internet Age, including domain name investors, domain name secondary marketplaces, domain name brokers, escrow service companies, registries, and related service providers. Our members are individuals and businesses located all over the world, **including India.**

The ICA’s mission is to assist with the development of domain name related policy, particularly as it relates to supporting, encouraging, and maintaining a viable domain name ecosystem where investment in domain names is respected.

The ICA is greatly concerned with your proposed revisions which would likely destroy a valuable and thriving secondary market for .IN domain names for the following reasons:

¹ <https://registry.in/system/files/public-consultation-document-terms-and-condition-for-registrants.pdf>

1. You have not identified **how many domain names and domain name registrants will be hurt** by the proposal. Through extensive promotion over the years, NIXI has directly and indirectly through its accredited registrars, encouraged the purchase of .IN and .Bharat domain name registrations - without any restrictions on resale by registrants.² Since the Initial .IN Internet Domain Name Policy Framework & Implementation in 2004³ (the “Framework”), there has never been any prohibition on the investment in domain names. As noted in the Framework, in 2004 there were “just under 7000 domains” in the .IN registry. Today there are over 3 million .IN and .Bharat domain names registered⁴ and many of these registrations were purchased by registrants for investment and resale with encouragement by NIXI and its registrars. These registrants relied on NIXI’s policies of permitting registrations for resale and accordingly now NIXI purports to pull the rug from under them causing untold financial harm. **The number of affected registrations could potentially be in the hundreds of thousands or millions.** You would be well advised to **conduct a study to determine the volume of affected registrations prior to making such a monumental decision.** After changing the policy, you will likely no longer be “one of the Fastest Growing Domain in the Asia Pacific”, but rather the opposite.

2. NIXI will potentially face a **dramatic loss of revenue** as a result of its purported policy change as affected registrants will be compelled to drop their domain names and thereby not remit any renewal fees or fees for new registrations. In effect, NIXI will be going backwards in time by greatly reducing the number of registrations and its associated revenue thereby possibly having to rely upon new government funding for its operations. You should conduct an **economic study** before making such a serious decision.

3. Your **rationale for considering the proposed amendments is totally unsupported by evidence.** You state without evidence, that “illegal and unfair trade practices pertaining to sale/purchase of delegated/registered .IN/.BHARAT domain names which affect the market environment”. What evidence do you have of this occurring and how often? It is impossible to even meaningful comment upon such unsupported allegations which are provided without any examples or evidence. Moreover, what do you consider “unfair trade practices” or “illegality”? India has well developed criminal and commercial laws which already would address such instances and therefore there is no basis to revise the registration agreement to prevent what is already unlawful.

4. **You have not clearly identified how the proposed new policy will be reflected in the Registrant Terms and Conditions.** Amending the Registrar-Accreditation Agreement⁵ as you have proposed, will of course, not alone bind registrants. An amendment to the Registrant Terms and Conditions would also be required but you provided no proposed amendment in this regard. As such, we can only assume that you intend to reproduce a modified version of Section 6.1 of the RAA in the Registrant Terms and Conditions but it is readily apparent that most of the provisions

² For example, see: <https://www.techcircle.in/2023/01/25/nixi-offers-free-access-to-indian-domain-names> and also see; <https://economictimes.indiatimes.com/tech/internet/it-ministry-plans-ad-campaign-to-promote-in-domain-name/articleshow/53407362.cms?from=mdr>

³ https://registry.in/public/uploads/files/inpolicy_0.pdf

⁴ See: <https://registry.in/index>

⁵ https://registry.in/system/files/RAA_28042022.pdf

in Section 6.1 do not even apply to registrants. Accordingly, **we request that you publish for comment, the actual proposed text.**

5. It is important to bear in mind that Section 6.1 was intended to **prevent registrars from unfairly harnessing their position in their position and to prohibit them from engaging in activities beyond the lawful scope of their activities as registrars.** You have complained that “some Registrars are using registrants as proxy and carry out illegal and unfair trade practices pertaining to sale/ purchase of delegated/registered .IN/BHARAT domain names which affect the market environment”. Assuming that is the case despite you not having provided any particulars or evidence, why don’t you employ the current provisions of the RAA to prevent such breaches? That is the obvious recourse and does not necessitate any changes to the Registration Terms and Conditions. It appears that in order to address an issue which is clearly in breach of the existing RAA and which you have clear recourse for, **you are needlessly conflating registrant rights with registrar obligations and thereby purporting to terminate nearly 20 years of registrant rights to resell domain names.**

6. **How do you contemplate preventing domain name resale, practically speaking?** Will you outlaw a business from selling its domain name asset to another business? When a company purchases another company that owns a domain name that is no longer needed, will it be forced to sell it to a third party at no more than the original registration fee? If a company purchased a domain name for a lot of money and no longer requires it, must it give it away for an amount no greater than the registration fee? Will a bankruptcy trustee be prohibited from selling a domain name belonging a defunct company at auction? Will a company have to sell its shares in order to overcome the prohibition on selling a domain name asset? Will registrants have to resort to selling a website along with a domain name as a bundle in order to a prohibition on selling domain names for a profit? What is even an “an exceptionally higher price than the published MRP”? Is there a formula for calculating this? Is selling a domain name that was registered for 15 years at 15X the registration and renewal fees “exceptionally high” even though the registrant paid that in total? Is selling a unique brand conceived of by a registrant for much more than the mere registration fee considered too high? Can a generic domain name like Homes .IN not be sold at a profit many lakh? **It is crucial that you seriously consider these issues which make your proposed amendments impractical and unenforceable.**

7. Have you obtained a legal opinion on restricting the rights of registrants to resell their property and/or transfer contractual rights? There would seem to be a **potentially substantial issue of restraint of lawful trade which may violate existing Indian law** should you proceed as you are contemplated. Moreover, you have not specified whether these new proposed restrictions would be retroactive and if so, whether **NIXI will become liable for damages** from all registrants who have had their rights taken away from them.

8. Have you examined resale rights in other jurisdictions? We are unaware of any jurisdiction which has adopted such a prohibitive policy. **India would likely stand apart globally, as the country which not only unlawfully took away registrant rights but also destroyed a vibrant secondary market** which brings in many crore of Rupees both to NIXI and to the thousands of investors who resell domain names. This is hardly the act of a pro-business government. PM Modi

has led India with free market reforms⁶ and your proposed course of action is exactly the opposite; restricting a vibrant and free market.

9. Do not lose sight of the fact that domain name investors contribute substantial resources into the .IN ecosystem and thereby contribute to the adoption and popularity of .IN domain names. Domain name investors build domain name tools and marketplaces and engage in promotional efforts to encourage adoption of .IN domain names throughout the world, including by companies who want to do business in India. **By targeting domain name reselling, you are strangling the growth of the .IN name space.**

10. You are considering a course of action that will deprive Indian citizens of a living. Prime Minister Modi stated on February 18, 2023 that “our focus was to empower the poor to enable them to contribute to the rapid growth of the country with their full potential”.⁷ Many thousands of Indians make their living and provide for their family by investing and reselling .IN domain names. Not only does your proposed course of action **threaten to destroy their existing investments but they will have also lost their future means of making a living.**

In conclusion, we urge you in the strongest possible terms, to immediately reconsider this proposed ill-advised course of action which threatens the Indian free market and will make India stand out as a country which has uniquely abandoned the rights of lawful registrants and which has constrained the growth of its vibrant domain name space.

Sincerely,
INTERNET COMMERCE ASSOCIATION



Per:
Zak Muscovitch
General Counsel, ICA

⁶ <https://www.wsj.com/articles/india-modi-free-market-reform-air-india-privatization-11635174665>

⁷ <https://timesofindia.indiatimes.com/india/join-the-india-story-its-a-guarantee-of-growth-says-pm-modi/articleshow/98026709.cms?from=mdr>