

## Proposed New .COM Registry Agreement

Revised Statement of the Intellectual Property Constituency, February 19, 2006

The Intellectual Property Constituency (IPC) appreciates this opportunity to comment on the proposed revised settlement agreement between ICANN and Verisign, and in particular on the proposed revised .com registry agreement that forms part of this settlement.

The IPC reiterates the comments made in its December 7, 2005 statement and incorporates them herein by reference (See <http://www.icann.org/topics/vrsn-settlement/IPC-statement-re-VRSN-settlement-07dec05.pdf>).

With respect to the process for approval of new registry services, the IPC is pleased to see that the revised .com registry agreement reduces from 3 to 2 years the timeframe in which Verisign would categorically not be subject to the procedure for approval of new registry services (NRS) developed by the GNSO Council in accordance with the Policy Development Process (PDP) in Appendix A of ICANN's By-Laws. However, the IPC believes that Verisign's proposed immunity from the approved NRS procedure for any length of time has not been justified. We believe Verisign should be subject to this procedure from the Effective Date of the Agreement, as are all other TLD registries, unless a specific justification for a deviation can be articulated and justified. We also strongly believe that this same NRS procedure should apply to new registry services that involve the use of traffic data. The apparent total exemption of such new services from any review procedure remains unjustified, in our view.

It is worth recalling that the PDP was created as a result of ICANN's Blueprint for Reform (<http://www.icann.org/committees/evol-reform/blueprint-20jun02.htm>) which recognized that any process for names policy development must (i) encourage broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet; (ii) be open and transparent; (iii) promote well-informed decisions based on participation by affected and interested parties and, where appropriate, expert advice; (iv) ensure that those entities most affected have an appropriate role in the policy development process; and (v) encourage bottom-up policy development. In fact, one of the PDP's first uses was in connection with the very issue as to which Verisign would, under the terms of the proposed revised agreement, be able to bypass it, namely new registry services. Specifically, in late 2003, ICANN's Staff Manager recognized the need for a predictable procedure for the introduction of new registry services and recommended that the GNSO initiate a PDP on this issue (<http://www.icann.org/gnso/issue-reports/registry-svcs-report-19nov03.htm>). As support for this recommendation, the Staff Manager recognized the diverse characteristics of new or modified services that had led to different results for different requests, without a clear articulation of the reasons for each decision. While we understand that the SiteFinder service itself is carved out of the proposed revised agreement, the fact remains that, were the proposed revised .com registry agreement to go into effect as is, Verisign would be empowered to unilaterally and without any review procedure roll out a new registry service involving traffic data that was just as controversial as SiteFinder. Indeed, for any other new registry service, no matter how controversial, Verisign would be allowed to bypass the NRS review procedure established via the PDP process. The

potential for further disputes involving ICANN, Verisign, and ICANN constituencies could be significant. Surely this cannot be in ICANN's interests.

As a result, the IPC strongly recommends that the proposed .com registry agreement be amended to require Verisign to be subject to the NRS procedure developed in the PDP for new registry services, including for new registry services based on the use of traffic data, unless a specific exception can be articulated and justified.

Finally, we do not consider the statement that "Verisign has provided confidential reports to ICANN" as responsive to our expressed concern about how if at all Verisign has lived up to its obligations under Appendix W of the existing agreement. This does not bode well for the prospect that ICANN will improve on its current level of performance with regard to contract compliance and enforcement.

Submitted by Caroline G. Chicoine, Vice President of the IPC, on behalf of the IPC.