



COMMENT OF THE INTELLECTUAL PROPERTY CONSTITUENCY ON THE PROPOSED RENEWAL OF THE .NET REGISTRY AGREEMENT

May 30, 2017

The GNSO Intellectual Property Constituency (IPC) appreciates this opportunity to comment on the proposed renewal of the 2011 .NET Registry Agreement. *See* <https://www.icann.org/public-comments/net-renewal-2017-04-20-en>. We urge that before it is approved by ICANN, the draft renewal agreement be revised to bring it into closer harmonization with nearly all other gTLD registry agreements, by incorporating the most up-to-date features to detect, prevent and remediate abusive registrations.

The IPC's interests in submitting these comments are to:

- Ensure that ICANN lives up to its commitments to act in the public interest, by seeking to include in its contracts modern best practices for combating abusive domain name registrations;
- Ensure that ICANN lives up to its commitment (articulated in the Affirmation of Commitments, and carried forward in the post-transition Bylaws) to address competitive issues by providing a level playing field among legacy and new gTLDs;
- Ensure that all registries implement practices and policies to minimize the level of abuses occurring in that registry.

The IPC supports implementing enhanced rights protection mechanisms for third party intellectual property owners, and urges Registry Operators to take on enhanced responsibilities to prevent use of registrations for abusive purposes, including but not limited to violations of intellectual property rights. These enhanced Rights Protection Mechanisms include, but are by no means limited to, those contained in the base New gTLD Registry Agreement, including the Uniform Rapid Suspension (URS) procedure. The IPC also encourages Registry Operators to voluntarily adopt industry best practices beyond the minimum rights protections required by ICANN, such as adding new restrictions against abusive registrations, additional suspension mechanisms, implementing blocking prior to registration, and creating new dispute procedures. The IPC also encourages ICANN to educate Registry Operators that the required RPMs are not a “ceiling” but a “floor”—the minimum required—and the Internet community is best served by Registry Operators that strive to go above and beyond the minimum by adopting industry best practices. We strongly believe that ICANN need not undertake a policy development process for Registry Operators to voluntarily implement new RPMs.

It is disappointing that the draft renewal agreement for .net does not reflect this approach, even though .net is the second largest gTLD (with over 15 million registrations).¹ This renewal extension should take steps to bring the .NET registry agreement as close as possible to harmonization with ICANN's other registry agreements, including those entered into with new gTLDs and many legacy gTLDs since 2013 in accordance with the multi-stakeholder process in furtherance of ICANN's mission; the IPC therefore supports alignment with the New gTLD Registry Agreement in the proposed .NET renewal, despite the former needing improvement. These steps would enable ICANN to provide a level playing field for gTLD registries, and would serve the public by making available more advanced tools for dealing with abusive registrations in gTLDs.

To address abusive registrations, the terms of the .NET registry agreement should incorporate the most up-to-date features that will aid in the detection, prevention and remediation of abuses. Enhanced safeguards to combat abusive registrations and protect users, including, among others:

- Consistent with the IPC's position communicated in response to the last .NET renewal,² and with the consensus policy adopted by the ICANN Board on February 7, 2014,³ a Thick Whois architecture, to ensure the accessibility of registration data across the registry, a key factor for the investigation of a wide range of abuse cases, and to enable quicker response and resolution when domain names are used for illegal, fraudulent or malicious purposes;
- Enhanced post-registration rights protection mechanisms for trademarks, notably the Uniform Rapid Suspension process,⁴ an important supplement to the UDRP for the most clear-cut cases of cybersquatting;
- Requiring registrars of domain names within the TLD to impose and enforce anti-abuse obligations on their registrants⁵; and
- Technical analysis and reporting requirements for specified forms of abuse.⁶

New gTLD registries have taken on these and other obligations in their agreements with ICANN, including several new gTLD registries operated by Verisign.⁷ Even some "legacy" gTLDs have taken on many or all of these safeguards as their registry agreements have come up for renewal. The IPC believes that the .NET agreement should include these safeguards, and that ICANN

¹ See http://www.verisign.com/en_US/domain-names/net-domain-names/index.xhtml#who-uses-net.

² See http://www.ipconstituency.org/assets/ipc-position-papers/2011/6.+IPC+Comments+on+the+.Net+Renewal+Agreement+2011_05May_10.pdf.

³ See <https://www.icann.org/resources/pages/thick-whois-transition-policy-2017-02-01-en>.

⁴ The .NET renewal agreement should set forth a process for ICANN to specify the date upon which these obligations will become effective for the .NET registry, along with an adequate transition period for the registry operator to put the necessary procedures into place.

⁵ Such provisions would build upon the Public Interest Commitments entered into by the vast majority of gTLD registry operators, including Verisign, see, e.g., <https://www.icann.org/resources/agreement/xn--11b4c3d-2015-01-15-en> at Spec. 11, section 3(a).

⁶ Such provisions could build upon the existing Public Interest Commitments entered into by nearly every gTLD registry operator, see Spec. 11, Sec. 3(b) of , e.g., <https://www.icann.org/resources/agreement/xn--11b4c3d-2015-01-15-en>.

⁷ See, e.g., <https://www.icann.org/resources/agreement/xn--11b4c3d-2015-01-15-en>.

should use its contract compliance authority to correct any pattern that might arise because of the registry operator's failure to do so. Such an approach would help ICANN achieve its previously announced goals to "increase the consistency of registry agreements across all gTLDs,"⁸ and to "provide consistency across all registries leading to a more predictable environment for end-users;"⁹ as well as to fulfill the ICANN's Affirmation of Commitments pledge to deal effectively with competition issues in the rollout of all new gTLDs.¹⁰

Without harmonization of the .NET registry agreement, the vast majority of gTLD registry operators will have taken on anti-abuse obligations that will not apply to their enormous competitor, the .NET registry; and consumers, intellectual property rights holders, law enforcement, and other members of the public will continue to lack adequate, up-to-date tools for detecting, investigating and remedying abusive registrations in .NET. This outcome would represent a missed opportunity for ICANN to promote the public interest in a safer Internet and in an improved competitive environment across the gTLD registry marketplace.

The IPC does not believe that modernizing the .NET registry agreement consistent with the above would require Verisign to undertake any responsibilities which it is not already committed to fulfilling in the operation of the numerous new gTLD registries that it owns or for which it provides the back-end registry services. Nor should anything in the improvements IPC proposes discourage Verisign from taking the initiative to institute more responsible anti-abuse policies and practices in .NET on a voluntary basis.¹¹ Verisign should be encouraged to take voluntary steps to preserve and enhance the integrity and trustworthiness of the domain name space for which it is responsible. If the needed improvements are not incorporated into the .net renewal at this point, then at a minimum a public commitment, with ICANN, for the negotiation of improved safeguards and their incorporation into the registry agreement by a date certain could provide added impetus for such voluntary arrangements.¹²

Respectfully Submitted,

Intellectual Property Constituency

⁸ See, e.g., <https://www.icann.org/public-comments/travel-renewal-2015-05-12-en>.

⁹ Rationale for Board Resolution 2015.09.28.05, available at <https://features.icann.org/renewal-travel-registry-agreement>.

¹⁰ See <https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en>, para. 9.3.

¹¹ Some of its competitors among the legacy gTLD registries have already done so, even where their contracts with ICANN have not required it.

¹² This would be consistent with the recent extension of the .COM registry agreement, which includes a 24-month "window" period for the negotiation of improved provisions. See <https://www.icann.org/sites/default/files/tlds/com/com-amend-1-pdf-20oct16-en.pdf>, section 2.