



Proposed Renewal of the Registry Agreement for .NET
Response of IPC to ICANN Call for Comments
May 25, 2023

These comments are submitted by the Intellectual Property Constituency (“IPC”) and provide specific discussion of some issues of particular importance to IP rights holders, which include trade associations, large multi-national corporations, as well as small businesses and individuals.

The IPC welcomes the proposed extension of the Letter of Intent between Verisign and ICANN, effective as of 27 March 2020 (“LOI”) to apply to the .NET registry (in addition to .COM). The IPC supports updates to the .NET Registry Agreement (“RA”) to bring it closer in line with the New gTLD Base RA with respect to user protections, such as Public Interest Commitments aimed at preventing or mitigating the use of domain names for abusive and illegal activities. In addition, as the Registry Stakeholder Group pursues negotiations with ICANN regarding targeted amendments to the New gTLD Base RA related to DNS Abuse (as defined by ICANN and contracted parties), it is essential that such contractual provisions also are incorporated into the RA for .NET (in addition to .COM, as previously agreed under the LOI). While the IPC understands that these negotiations are taking place bilaterally between ICANN and contracted parties, the IPC reiterates the importance of ensuring adequate opportunities for meaningful input from the IPC and other non-contracted stakeholders -- and meaningful consideration of such input in the negotiation process. Absent this, the IPC would have no choice but to question whether ICANN is acting as an effective representative of the broader global multi-stakeholder community, and a steward for public interest concerns, in the matter.

Second, the IPC notes that one of the main provisions in the LOI relates to Verisign’s agreement to make annual payments for a period of five years, beginning on 1 January 2021 of “USD four million to ICANN (each, a ‘Payment Amount’) for costs to be incurred by ICANN during the upcoming 12-month period (each, an ‘SSR Period’) in conducting, facilitating or supporting activities that preserve and enhance the security, stability and resiliency of the DNS, which may include, without limitation, active measures to promote and/or facilitate DNSSEC deployment, Security Threat mitigation, name collision mitigation, root server system governance and research into the operation of the DNS (together, ‘SSR Activities’).” ICANN in turn commits that “No later than fourteen days before the end of each SSR Period, ICANN shall provide Verisign with a signed writing from an officer of ICANN confirming that ICANN has incurred costs up to or in excess of the Payment Amount in conducting SSR Activities during the then-expiring SSR Period (‘Confirmation’).”

To date, the community has had no visibility on what additional SSR activities ICANN has been able to undertake, utilizing this funding from Verisign. In extending the LOI for the .NET registry, ICANN should take the opportunity to enhance transparency around these SSR activities, including a requirement that the Confirmation be made public and include specific details concerning the nature and costs of the SSR activities. On a related note, definitions for what constitute “Security” and “Stability” in the renewed .NET RA should be made consistent with how these terms are treated under the New gTLD Base RA -- as it stands, the definitions in the current and proposed renewal .NET RA are much more limited.

Third, it is critical that the .NET RA renewal (and all other efforts to update or amend ICANN agreements) take into account recent regulatory developments, notably the approval of the updated EU Directive on Network and Information Security Services in 2022 (“NIS2”). As ICANN is well aware, NIS2 has been adopted, now constituting binding law within the EU, and is in the process of being transposed and implemented by each EU Member State. In particular, the .NET RA defines .NET as a “thin” registry, whereas NIS2 provides a clear legal basis for all gTLD registries, including .NET, to operate as “thick” registries. As the IPC has previously stated, it is critical from an SSR perspective for all registries to operate as “thick” registries for all the reasons set forth in the community and Board-approved Thick Whois Consensus Policy. Any alleged ambiguity that may have been created by GDPR as to whether this Consensus Policy can and should be implemented has now been resolved by NIS2. The IPC therefore calls on ICANN and Verisign to use the .NET renewal opportunity to transition .NET to a thick registry in line with the Consensus Policy and pursuant to the legal clarity afforded by NIS2.

Fourth, as the IPC has previously commented, in relation to the prior renewal of the .NET RA and the most recent renewal of the .COM RA, the IPC is disappointed that Verisign has declined to take this opportunity to integrate voluntarily the Uniform Rapid Suspension System (“URS”), the Post-Delegation Dispute Resolution Procedure (“PDDRP”), or other new gTLD Rights Protection Mechanisms (“RPMs”) into these TLDs. This is another missed opportunity for Verisign to demonstrate a commitment to the basic level of consumer and rights holder protections that have been in place for many years now in almost all gTLDs.

The IPC appreciates its role in the ICANN multi-stakeholder model and trusts that ICANN and Verisign will take these comments into account as they pursue the renewal of the .NET RA.