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March 10, 2006

The Honorable Carlos Gutierrez  
Office of the Secretary  
U.S. Department of Commerce  
14th & Constitution Ave., NW  
Room 5516  
Washington, DC 20230

Re: Proposed .COM Agreement

Dear Secretary Gutierrez:

We are writing to express our concerns about the implications of the proposed .COM agreement for the long-term viability of the Internet Corporation of Assigned Names and Numbers (ICANN).

**First, we would like to make two points about the new .COM agreement itself.**

In regard to the impact of non-cost-justified increases in registration prices, in light of VeriSign's market power it is important to keep in mind that VeriSign is not just the .COM registry. They are also the sole registry operator for .NET, the second largest gTLD and the third largest TLD in the world. They are also the sole registry provider for two of the more popular country code TLDs that are available for general registration, .TV and .CC.

Both ICANN and VeriSign like to position the presumptive renewal in the new .COM agreement as something that is already in the currently effective agreement. This is simply not true. The presumptive renewal in the new agreement has been strengthened in VeriSign's favor in at least two important ways:

1. VeriSign is not required to demonstrate it provides, or will continue to provide, a substantial service to the Internet community in its performance under the agreement.
2. VeriSign is not required to demonstrate it continues to be qualified to operate the registry TLD during the renewal term.

Both are requirements under Section 25.B of the current agreement. In the new agreement, the renewal is automatic simply as long as there is no unresolved breach. In fact, section IV.3

of the new agreement even allows VeriSign to fail to perform in good faith and repeatedly and willfully breach the agreement with only punitive and/or exemplary damages as consequences. Simply put, the strengthened presumptive renewal makes absolutely no sense for the community, or stability and security as a whole. The existing presumptive renewal is far from burdensome on VeriSign and makes only reasonable expectations of them.

**Second, and perhaps more importantly, the process that led to ICANN's approval of the proposed .COM agreement was flawed. The process was outside the majority of the affected community's expectations and not in line with ICANN's own bylaws.**

There was no notice to the community regarding ICANN's apparent belief that .COM no longer held market power within the generic Top Level Domain (gTLD) name space, nor any indication it would be pursuing a settlement with VeriSign that would change long standing policy regarding registry price limitations and presumptive renewal of registry agreements.

This lack of notice flies in the face of Article III of ICANN's bylaws regarding Transparency. Section 1 of Article III states: "ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness." ICANN failed to make even a minimal attempt to operate in an open and transparent manner in this regard. Instead, the community was informed only after a settlement had been reached, which included a new .COM registry agreement.

ICANN did allow for a comment period regarding the proposed settlement. The comments received were overwhelmingly negative and included many small businesses, individual users, the At-Large Advisory Committee, Registrars, and others. Purportedly, ICANN engaged in a second round of negotiations with VeriSign based on these comments. However, the second version of the proposed .COM agreement did little to address the major concerns of the community regarding the change in long standing policies on price limitations and presumptive renewal. The follow-up comments from the community bear that out and can be viewed at:

<http://forum.icann.org/lists/revised-settlement/>

As a result of ICANN's blatant disregard for its own founding principles of transparency and bottom-up consensus based policy development, the Generic Names Supporting Organization (GNSO) resolved to initiate a Policy Development Process (PDP) to consider policies for contractual conditions for existing gTLD registries. As you know, the GNSO consists of six constituencies, including Commercial and Business, Internet Service and Connection Providers, Non-Commercial, Intellectual Property and gTLD Registries, as well as Registrars. Three weeks before the Board voted to approve the .COM agreement, the resolution for this PDP passed with a Supermajority of the GNSO Council Members voting in favor.

The Board vote approving the new .COM agreement and the Board Members' comments that followed are also evidence that there was a lack of process, transparency and accountability. The Board vote was 60% in favor, 40% not in favor. Five Board members voted against the agreement. Of those who voted in favor, at least two were not completely comfortable with

March 10, 2006

Page 3 of 3

their vote. For example: Demi Getschko (selected by the Country Code Names Supporting Organization) Voted YES but said:

This is a very difficult decision. I'm really not comfortable with many aspects of this settlement...I really would like to have more time and room for negotiations on this.

Furthermore, Vanda Scartezini (selected by the Nominating Committee) Voted YES but said:

I still have important objections about some points of the agreement... I'm obviously worried about the difficulties and obstacles that shall arise from ICANN decision on the .com agreement...

Five ICANN Board Members voted "No" as follows:

Raimundo Beca Voted NO (selected by the Address Supporting Organization)  
Susan Crawford Voted NO (selected by the Nominating Committee)<sub>(sic)</sub>  
Joichi Ito Voted NO (selected by the Nominating Committee)  
Njeri Rionge Voted NO (selected by the Nominating Committee)  
Peter Dengate Thrush Voted NO (selected by the Country Code Names Supporting Organization)  
Michael Palage Abstained (selected by the GNSO)

It is clear ICANN has failed to follow its own principles of openness and transparency, and it follows process only when it suits its agenda. ICANN has lost much of the trust of the community. We ask that the Department of Commerce not give its final approval to the new .COM agreement and instead send it back to ICANN. Neither ICANN nor the Department of Commerce should consider any new .COM agreement until the pending GNSO PDP has completed.

Perhaps then, we can work toward the goal expressed by Director Susan Crawford: "...evaluate how ICANN should be structured and should operate for the future, so that crises of confidence like that created by this proposed agreement can be avoided. We should take this opportunity to engage together to make ICANN into a 'city on the hill' — a model of private self-governance."

Respectfully,

GODADDY.COM, INC.



Warren Adelman  
President & Chief Operating Officer

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