

July 17, 2018

To: David J. Redl and Fiona Alexander
National Telecommunications and Information Administration
U.S. Department of Commerce

Via Email: iipp2018@ntia.doc.gov

Comments Regarding NTIA June 5, 2018 Inquiry

“International Internet Policy Priorities”

Ms. Alexander and Mr. Redl,

Thank you for the opportunity to hear comments regarding the operations of the Internet, specifically with relation to ICANN and the operations of the IANA contract.

We are sure you will have opportunity to hear from many organizations with regards to the questions being asked. We would like to point out some serious issues with the ICANN organization and items that we believe need to be addressed. All of which should involve the NTIA going forward.

Specifically, we would like to address points of failure from the ICANN organization for which there is little or no oversight, and should be of considerable importance to the NTIA and the DOC.

1. ICANN Has Created a Monopoly for Operation of .COM Domain Names

ICANN created a monopoly and awarded Verisign perpetuity to this monopoly through a process called regulatory capture.¹ Verisign operates this monopoly over all .COM domain names, and ICANN allows Verisign to continue to run the monopoly without contest. In return

¹ Domain Arts. November 22, 2011

<http://www.domainarts.COM/2011/11/22/upcoming-Verisign-price-increase-reminder-of-icanns-failure/>

for ICANN's allowance of this monopoly, Verisign agrees to pay ICANN tens of millions of dollars a year. ICANN has a financial benefit in allowing this monopoly to exist, even though many companies have stated they can provide the same operations that Verisign provides for a far lower cost. ICANN has proven to act against public interest and award this no-bid contract with its own financial incentives first. In fact, the contract to operate the .COM domain name extension has not been put to public tender since the year 2005². ICANN turns a blind eye to being responsible for creating this monopoly and allowing Verisign to run this monopoly without any contest at the cost of American companies every year. This sweetheart deal between ICANN and Verisign is notorious in the domain name industry and goes against the premise of the Internet being open and free.

While it is sometimes assumed Verisign created .COM domain names, this is far from the truth. In 2000 Verisign acquired Network Solutions giving it rights to operate .com, .net and .org top-level domains under an agreement with the DOC³. Since that time Verisign and ICANN have worked privately to forge back-end deals that essentially give Verisign a monopoly to operating .COM domain names.

2. ICANN's Allowance of Increases In .COM Domain Prices Until the DOJ's Intervention

In 2012 ICANN allowed the non-bid renewal of the .COM contract with Verisign, allowing for Verisign to increase the prices of domain names within this monopoly by 7% in four out of six years during this contract. Verisign was already making ridiculous profits at the time the price increases were put into place, all while the general costs of IT and infrastructure were going down significantly. The increase of .COM domain prices were allowed by ICANN until the NTIA and Lawrence E. Strickling finally stepped in and put a price fix on .COM domain names at \$7.85 per year.⁴

Without the NTIA and critical oversight by the DOC, ICANN would have blindly allowed Verisign to increase such prices at significant cost to American citizens and businesses.

² The Register. Kieren McCarthy. July 1, 2016.
https://www.theregister.co.uk/2016/07/01/Verisign_retains_dotcom_cash_cow_until_2024/

³ Wikipedia
<https://en.wikipedia.org/wiki/Verisign>

⁴ NTIA. Peter J. Kadzik.
https://www.ntia.doc.gov/files/ntia/publications/2016-8-31_doj_response_to_cruz-lee-duffy.pdf

3. The Early Extension of the .COM Registry Agreement in 2016

Even though the .COM Registry Agreement with ICANN did not end until 2018, ICANN amended its agreements with Verisign two years early and awarded Verisign yet another no-bid extension of the TLD until 2024. It also extended the Root Zone Maintainer Agreement at the same time coincide with the end date of 2024.

ICANN held a public comment period on the early extension of the .COM Registry Agreement, and the overwhelming feedback was focused on forcing a price reduction for .COM domain names and the move away from an evergreen deal between the two companies.⁵ Most industry participants, including contracted parties such as ICANN accredited registrars, recommended a price reduction on .COM domain names. However ICANN did nothing about the monopoly it created and continues to sanction to this day. Instead of addressing concerns, ICANN simply asked for comments that it would simply wind up ignoring, and finally renewed Verisign's interest early without addressing the ongoing issues it was creating with the Internet community. It should be noted it is very typical of ICANN to ask for comments, summarize those comments, and then do nothing about those comments. Asking for public comment is merely a formality for the organization, but carries no real value or weight.

As addressed above, ICANN receives a very large portion of its funding from Verisign, to the tune of \$45.5 million per year.⁶ Due to this large conflict of Interest, it is impossible for ICANN to act in the best interest of the global Internet community. ICANN needs to be held accountable, and the United States government should be the one to do so given that it funded and essentially created the Internet in the first place.

4. ICANN's Need for Outside Help with Extortion in the .Sucks gTLD

It is believed that ICANN created a process to allow for extortion with operation of the .sucks top level domain. ICANN awarded the top-level-domain .sucks to Vox Populi Registry / Momentus Corp, who had previously and publicly used the .XXX extension and promoted it through a fear campaign of people securing their .XXX domain name before someone else did. The registry was creating a non-existent problem, and offering to take payments to fix the problem that it was creating through the purchase of the .XXX domain name (from the company that had created the problem in the first place.) Even when the domain names in question were very clear and obvious trademarks. In this situation, companies were encouraged to register SmallBusinessName.sucks in defensive manners in order to prevent that URL from being

⁵ ICANN. Staff Report of Public Comments. September 6, 2016.
<https://www.icann.org/en/system/files/files/report-comments-com-amendment-09sep16-en.pdf>

⁶ ICANN. Draft FY19 Total Budget. January 19, 2018.
<https://www.icann.org/en/system/files/files/proposed-total-budget-fy19-19jan18-en.pdf>

abused by the nefarious. Once ICANN realized the issue it had created, instead of rectifying the situation on its own, it had to ask the U.S Federal Trade Commission to investigate the issue.⁷ Thereby only corroborating that ICANN is not capable of governing itself. It should be noted that as of today Vox Populi / Momentus Corp have not been found to be guilty of extortion or extortionist behavior, but it is the opinion of many that this this gTLD is operated extortionately, even so much so that ICANN needed to ask the US Government for confirmation and help with the mess that it had allowed to create, and was too sticky for it to address on its own.⁸

5. ICANN Budgeting Issues

ICANN has had a ballooning of expenses over the past nine years.⁹ ICANN's expenses swelled from \$70 million in 2013 to \$150 million in 2018.¹⁰ In January 2018, ICANN CEO Göran Marby said:

"I recognize ICANN org could have done better in its financial long-term planning, and I know many of you agree based on previous public comments, such as the recent one on the reserve fund, as well as previous budget public comments, and I thank you for that. Now is the time, and we need your help, feedback, and input to finalize the budget."¹¹

Unfortunately ICANN and Mr. Marby are unable to say no to new projects and initiatives. When pressured about the budget crisis, Mr. Marby said that the 2019 budget was already 90% accounted for, and the organization was unable to cut additional costs. This is a serious issue when ICANN was self-funded and self-regulating not very long ago, but now ICANN and the multi-stakeholder approach is becoming far too big and bloated to accomplish any of ICANN's core goals.

⁷ CBC Radio-Canada. April 10, 2015.
<https://www.cbc.ca/news/technology/sucks-domain-names-could-get-canadian-firm-in-trouble-with-icann-internet-address-regulator-1.3027676>

⁸ Domain Incite. Kevin Murphy. May 10, 2015.
<http://domainincite.COM/18503-businesses-call-on-regulators-to-stop-sucks-extortion>

⁹ Domain Name Wire. Andrew Allemann. March 28, 2018.
<https://domainnamewire.COM/2018/03/28/icanns-budget-crunch-headcount-growth/>

¹⁰ Domain Name Wire. Andrew Allemann. March 27, 2018.
<https://domainnamewire.com/2018/03/27/icanns-budget-crunch-how-we-got-here/>

¹¹ ICANN. Draft FY19 Operating Plan and Budget. January 19, 2018.
<https://www.icann.org/news/blog/the-draft-fy19-operating-plan-and-budget>

6. ICANN's Inadequacy with Europe's GDPR Privacy Protection Rights

Recently ICANN failed to provide protections for American citizens and businesses with relations to GDPR privacy protection. The European Union launched GDPR and ICANN failed to work on behalf of American companies' rights to not have GDPR protections waived for domain name registrations. Since the beginning of the Internet there have been traceable contact information through the public 'whois' service.

Whois is a critical component to managing and maintaining Internet domain names, and for the operational stability of the Internet. Instead of working with the European Union, ICANN, an "International Organization", simply yielded to the EU's mandates and allowed the entire Whois system to virtually go dark due to EU law. ICANN did not provide American companies, especially domain name registrars such as GoDaddy, proper direction until after GDPR took effect on May 25, 2018. To date ICANN still has not properly addressed the global GDPR situation¹². This is yet another area where the United States government will need to step in and provide allowances for American companies to publish whois data for the benefit of their organization, as well as for law enforcement and intellectual property enforcement. Without the fear of being held hostage to draconian EU laws.

To date, Whois remains broken and fragmented. The lack of published contact information is now enabling more phishing, more spamming and more illegal activities on the Internet without proper takedown channels for both American-based businesses and businesses worldwide. This has been allowed by ICANN who wants to continue to be an International organization, yet time and time again ICANN does not have the ability to properly self-govern or make decisions on behalf of the free-world. The Internet was created open and free, yet at every turn it seems ICANN is making all the wrong choices.

It is these types of projects that ICANN is completely failing in, and only serve to demonstrate how badly ICANN needs oversight from the United States Government, which is completely opposite to what ICANN wants for itself. Unfortunately ICANN is not a utopian organization that deserves to be free of limits and boundaries.

7. gTLD Expansion and Future gTLD Expansion(s)

Instead of testing the waters with a gTLD landrush on extensions such as .web, .golf, .law, etc, ICANN rushed full into the gTLD expansion against community concerns¹³. The Internet was

¹² The Register. Kieren McCarthy. July 6, 2018.
https://www.theregister.co.uk/2018/07/06/europe_no_to_icann_whois/

¹³ ICANN. gTLD Applicant Guide Comment Periods.
<https://forum.icann.org/lists/2gtld-guide/> May, 2009.

not in dire need of a large number of alternate domain names, on top of the 230 or so domain name extensions that existed at the time. Instead, ICANN thought it best fit to launch a few thousand new extensions, pulling in over \$185,000 per application for a new top-level-domain (TLD), on 1,930 gTLD applications, and an astounding \$350 million in revenues for the non-profit organization.¹⁴ This was at a time when ICANN already had an already-too-large \$67 million budget in 2012.

Without success in such program, and what many consider to be a failure¹⁵, ICANN is acting more like a for-profit organization than a not-for-profit, and currently planning the launch of more rounds of gTLD applications when there is no demand or need for such new extensions. ICANN is clearly ignoring it's bigger responsibilities to the world, while it blindly focuses on its own financial interest, instead of working to further protect and enable the wonderful Internet we have upon us today.

8. ICANN's Bloat and Inability to Do Things

The multi-stakeholder approach of ICANN is fundamentally flawed. It introduces far too many complexities. It requires too much discussion and deliberation. And the organization is far too big for its own good. The organization is bloated, has practically no oversight, wishes to have even less oversight, and frequently creates and runs into issues for which it is not capable of handling. The organization is filled with lobbyists all pulling for their own direction. The multi-national, multi-stakeholder approach simply does not allow ICANN to make any headway on important issues (such as GDPR), and therefore is in a constant state of turmoil.

In Summary

For all the issues and reasons, it is apparent that ICANN needs proper oversight by the United States Government. ICANN unfortunately needs to be held to some form of standards, and the organization is not able to run itself as a neutral party without running the Internet amess. The IANA transition should be "unwound", which will lead to better growth of the Internet and encourage competition and innovation instead of stagnation and fragmentation. The Internet needs to remain free and not be bound to one incapable ever-growing organization that has lost focus of its core missions and values. The United States created and maintained the Internet

and <https://forum.icann.org/lists/gtld-guide/> January, 2009

¹⁴ CNN Money. Julianne Pepitone. June 13, 2012
<https://money.cnn.com/2012/06/13/technology/new-domain-expansion-gtlds/index.htm>

¹⁵ CircleID. Phil Buckingham. January 14, 2016.
http://www.circleid.COM/posts/20160114_real_facts_stats_about_icann_gtlds_big_fail_so_far/

very successfully for many decades, and the expedient stewardship transition out of the U.S.'s control was a very serious and grave mistake for Internet users worldwide.

ICANN has created far too many major issues over the years, and there are few achievements the organization has successfully undertaken. While there is lots of contention on the launch of over 1,000 new TLDs, for the sake of argument we will say that this is one thing for which ICANN might plausibly be applauded for.

We thank you for your interest in these important topics and really hope that the United States retains some forms of control over critical functions of the Internet via the NTIA and DOC. We hope you help make the Internet more open, more free, more competitive and better maintained than ICANN has done with the above referenced matters.

Keven Dabney
Internet and Domain Name Professional

A handwritten signature in cursive script that reads "Keven Dabney". The signature is written in black ink and is positioned below the typed name and title.