

14 August 2023

RE: ICANN Board Response to ICA

Zak Muscovitch, General Counsel
Internet Commerce Association (ICA)

Dear Mr. Muscovitch,

Thank you for your [letter](#) to the Board dated 27 June 2023 regarding the Public Comment Summary and Analysis [Report](#) on the 2023 .NET Registry Agreement (RA) renewal. ICANN takes your comments seriously and we appreciate your request to seek additional clarification about the public comment process. The public comment process is a vital element of ICANN's multistakeholder governance. Every comment is carefully reviewed prior to the publication of the Public Comment Summary and Analysis Report. I can assure you that the Board was thoroughly briefed on the .NET RA renewal prior to the execution of the agreement, which included a discussion of the public comments and an analysis of whether changes to the agreement were needed based on the comments.

While we acknowledge your feedback, we respectfully disagree with your conclusions and allegations. The Internet Commerce Association's (ICA) claims that the Bylaws have been violated are unsubstantiated. We also respectfully disagree with the ICA's claims about the inadequacy of the public comment process which ignore the reasoned responses provided to the comments, including a change to the agreement based on the community input.

We refer you to the [Decision Paper](#) for the renewal of the .NET RA, which was published on 29 June 2023, after receipt of your letter. The Decision Paper is a means by which ICANN explains the thinking behind the decision, and it is an important transparency tool. The concerns and points made by the ICA were carefully examined and considered in both the Public Comment Summary and Analysis Report and the Decision Paper prior to the approval of the 2023 .NET RA renewal. Nevertheless, we wish to again address the issues you have raised.

In your letter, you assert that ICANN is not adhering to comments in the 2022 Final Declaration of the Independent Review Process (IRP) Panel in the [Namecheap, Inc v. ICANN IRP](#) regarding the public comment process. As noted above, ICANN is fully committed to the public comment process and attempts to address all concerns raised clearly and concisely with the foundation of the ICANN Bylaws, including the Commitments and Core Values, in mind. The Decision Paper reflects this commitment and meaningfully addresses all public comments and ICANN's reasoning for its decisions in an open and transparent manner. Inevitably, there will be some areas where ICANN and some members of the community may not agree. However, ICANN is

committed to working within the scope of the obligations in the Bylaws when negotiating an agreement or reviewing and addressing comments from the community. As set forth in the Decision Paper, the Board was consulted about the public comments, the .NET RA generally, and the specific issues raised in your public comment.

To specifically address your feedback regarding the need for an economic study to evaluate the per-registration fee for .NET, as noted in the Decision Paper, ICANN does not believe it is necessary to conduct an independent study of the .NET wholesale registration price to maintain the existing pricing constraints. Moreover, it is not clear that an economic study could answer the abstract question of what wholesale registration price for .NET would be appropriate. The existing pricing structure enables every registry operator to assess and implement prices it believes appropriate in the domain name registration marketplace within the contractual limits. This aligns with ICANN's Core Value of "depending on market mechanisms to promote and sustain a competitive environment in the DNS market" where feasible and appropriate.

Regarding the inclusion of Section 2.15 of the gTLD Base Registry Agreement (Base RA), as mentioned in the Decision Paper, it is important to note that the registration information and wholesale pricing for .NET are already publicly accessible and available to anyone. When Section 2.15 was considered and eventually included in the Base RA it was because the registration information for many legacy TLDs, including .NET, was already available and for new gTLDs it would not otherwise be publicly available. Therefore, the obligation to explicitly include an obligation for the registry operator of .NET to cooperate with an economic study was deemed unnecessary.

Your letter raised concerns about the negotiation process. ICANN and Verisign conducted good faith negotiations regarding the terms of the agreement. As a result of these negotiations, the renewed .NET RA more closely aligns with several contractual obligations from the Base RA, including the obligations from the recently approved 2023 Global Amendment to the Base RA. However, it is important to note that despite these changes the 10% price cap has not been removed from the renewed .NET RA even though doing so would be more consistent with the Base RA.

Regarding your request to put the .NET TLD out for bid, there is no basis to do so. All registry agreements include the presumptive renewal provision, which promotes stability and investment in TLDs. If ICANN were to put every TLD out for bid every renewal cycle to give it to the lowest bidder there would be no incentive for registry operators to invest in long-term stability and growth of the TLD(s) they operate. Verisign has demonstrated this stability and investment over the past 25 years, maintaining security and continuity without disruption and continuing to invest in the TLD's operations.

The real risk in repeatedly putting TLDs out for bid is to the Internet users, as bidding registry operators might prioritize cost-cutting over investing in the TLDs long-term stability and reputation. It is important to remember that the price of a domain registration is just a fraction of the total investment made by registrants in building and maintaining their websites, marketing, and communicating around their names. Therefore, incentivizing security, stability, and reliability in TLD operations, such as the presumptive renewal provision, is essential for the well-being of users and the integrity of the TLD.

Overall, the renewal of the .NET RA under the negotiated terms was the prudent step that accomplished many benefits for the Internet community as explained in the Decision Paper.

Again, thank you for your comments.

Sincerely,



Tripti Sinha
Chair, ICANN Board of Directors