

Response to ICANN'S Call for Public Comments on the Proposed Renewal of .org Registry Agreement

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Preliminary

We thank ICANN for the opportunity to comment on this issue of its proposed renewal of the .org Registry Agreement with the operator, Public Interest Registry (PIR). Supporting much of the community, we too find severe issues with the proposed agreement. These centre around the removal of price caps and imposing obligations being currently deliberated in an ongoing Policy Development Process (PDP).

Presumption of Renewal

CIS has, in the past, questioned the need for a presumption of renewal in registry contracts and it is important to emphasize this within the context of this comment as well.¹ We had, also, asked ICANN for their rationale on having such a practice with reference to their contract with Verisign to which they responded saying:

“Absent countervailing reasons, there is little public benefit, and some significant potential for disruption, in regular changes of a registry operator. In addition, a significant chance of losing the right to operate the registry after a short period creates adverse incentives to favor short term gain over long term investment.”²

This logic can presumably be applied to the .org registry, as well, yet a re-auction of, even, legacy top-level domains can only serve to further a fair market, promote competition and ensure that existing registries do not become complacent. These

¹Padma Venkataraman, Why Presumption of Renewal is Unsuitable for the Current Registry Market Structure available at <https://cis-india.org/internet-governance/files/why-presumption-of-renewal-is-unsuitable-for-the-current-registry-market-structure>

²Asvatha Babu, DIDP Request #20 - Is Presumptive Renewal of Verisign's Contracts a Good Thing available at <https://cis-india.org/internet-governance/blog/didp-request-20-is-presumptive-renewal-of-verisign2019s-contracts-a-good-thing>

views were supported in the course of the PDP on Contractual Conditions - Existing Registries in 2006 wherein competition was seen useful for better pricing, operational performance and contributions to registry infrastructure.³ It was also noted that most service industries incorporate a presumption of competition as opposed to one of renewal.⁴

Removal of Price Caps

ICANN's decision to remove price caps in the .org agreement will only intensify the unfettered power given to Registries with the presumption of renewal. The organization has long heard accusations of engaging in closed door decision making and with such a move that pushes for the rights of registries over registrars, such concerns are only growing. As it is, .org can raise its prices by 10% every year which is unduly generous in itself.⁵ Giving PIR a limitless ability to increase prices would be doing grave injustice to domain owners who have bought such domains under the assumption of price caps. This is in contrast to the new gTLDs where there is more of a burden on such owners to keep up with the actions of private owners. Legacy gTLDs, unlike the new ones, were not created and sold to private entities but handed over to entities like PIR to maintain them in public interest.

Being one of the first TLD's to be introduced, a multitude of significant websites and therein, initiatives, have their home on the .org domain. As pointed out in the community discussions several times, these domains are used by NGO's, nonprofit trade associations, individual member associations as well as tax-exempt charities.⁶ ICANN's justification for proposing these steps is to align legacy gTLD agreements

³Supra Note 1

⁴ Ibid

⁵ Konstantinos Zournas, This Means War! ICANN proposes lifting price cap provisions on .org and .info domains available at

<https://onlinedomain.com/2019/03/19/domain-name-news/this-means-war-icann-proposes-lifting-price-cap-provisions-on-org-and-info-domains>

⁶ ICANN comments available at

<https://mm.icann.org/pipermail/comments-org-renewal-18mar19/2019q1/000000.html>

with those of the other newer gTLDs but as argued by the Internet Commerce Association;

“They have completely different characteristics, history, and ownership structure. It is not acceptable for ICANN to ignore these differences and to propose that they be treated the same.”⁷

Given the longevity of these domains on .org, they have put in substantial investment in maintaining their online presence and cultivating their identity and brand. They are entitled to protection from arbitrary pricing and having the same financial rules as when they originally bought their domains. If such caps are removed then many of these domain owners can find it too expensive to maintain their sites, especially with no guarantee of future price stability as well. A look at the mailing lists is enough to see how small organizations are actively pleading with ICANN to not go ahead with this because it will increase their operational costs.⁸

None of this is to say that PIR would, in fact, go ahead and increase the prices exorbitantly or at all, however leaving that option to them does not bode well for any party save them. Further, no clear reasoning has been provided for such a step like the need for any additional funds to maintain the domain and in absence of any exceptionally necessary situation, the price cap should continue to exist. Given that PIR is a not-for-profit organization, the rationale to remove caps seems even less unclear than it would be, for say, Verisign. Allowing the removals could very well be opening Pandora’s box with other Registries then demanding removals too. Registries own all the extensions to their domain and lack of a price ceiling only enriches the revenue of, ultimately, the one owner leading to a bigger monopolistic situation than already is currently prevalent.

⁷ Comment by Internet Commerce Association available at <https://www.internetcommerce.org/comment-org>

⁸ ICANN Comments available at <https://mm.icann.org/pipermail/comments-org-renewal-18mar19/2019q2/thread.html>

Rights Protection Mechanisms (RPMs)

ICANN has proposed that the domain will be subject to RPMs such as the Uniform Rapid Suspension(URS) amongst others however the RPM Working Group is still deliberating whether URS should ultimately become a consensus policy. This and related discussions have been taking place for the past few years and without a decision on if they should be universally applied to all gTLD's, it is not in ICANN's authority to enforce the same in the Registry agreement. Moreover, the deliberations of the PDP on the same were not intended to be retroactively applicable to legacy gTLDs. The URS policy is too novel to be applied without further discussion on domains that are decades old. At the very least, ICANN should have waited for the Working Group to come out with their report before seeing any merit in such a suggestion.