

NCUC response to the ICANN-VeriSign settlement

Impact on noncommercial users

The specific changes proposed for the .com contract will not have a major impact on noncommercial users because most of us do not register in .com. However, the method by which this decision was reached may have lasting and major effects on the way ICANN operates. The effects potentially go far beyond .com. Specifically, we see private bargaining between ICANN staff and its contractors replacing the policy development process of ICANN's constituencies. While we do not believe that every change in registry contracts should be subject to collective oversight, in this case we believe that ICANN staff has crossed the boundary between contracting and policy making. We also see a dangerous conflict between ICANN's putative oversight role and its incentive to negotiate generous financial agreements with a contractor that is at the same time ICANN's main source of revenue.

Therefore we propose the following actionable items to the Board:

1. We would like to see the “no criticism of ICANN” provisions stricken from the settlement agreement.

We are concerned about a pact between a large, dominant business and the policy setting authority in which one of the parties agrees not to criticize the other. We find this threatening to the free and robust dialogue about policy that should take place within ICANN.

2. We would like to see ICANN's GNSO initiate a policy development process of the issue of registry renewal expectancy, and produce and adopt a uniform policy that would apply equally to all registries

Some within the NCUC accept the idea of stable property rights in a TLD registry, in which registries have renewal expectancy unless they engage in serious service breakdowns or malfeasance. Others support regular rebids of the right to operate the domain. A similar difference of opinion probably exists in other constituencies. This issue should not be resolved by the ICANN staff in secret bargaining sessions. Nor should it be resolved on a piecemeal basis. Moreover, all registries should be treated equally in this regard. Therefore a policy should be set via the ICANN process, and used as the basis for staff negotiations with registries.

3. We would like to see a policy development process on the issue of price caps for registries.

Here again, arguments can be made for and against the elimination or relaxation of contractual price caps. The best policy probably would apply to all registries, or might depend on the market power of the relevant registry. This issue should not be resolved by the ICANN staff in secret bargaining sessions. Nor should it be resolved on a piecemeal basis. Moreover, all registries should be treated equally

in this regard. Therefore a policy should be set via the ICANN process, and used as the basis for staff negotiations with registries.

4. As a general principle, we support the transfer of DNS root zone signing authority from VeriSign to ICANN, but believe that ICANN's legitimacy, independence and representational structures need improvement.