

# Staff Report of Public Comment Proceeding

Proposed Renewal of .org Registry Agreement			
<b>Publication Date:</b>	3 June 2019		
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<b>Public Comment Proceeding</b>		<b>Important Information Links</b>	
Open Date:	18 March 2019		
Close Date:	29 April 2019		
Staff Report Due Date:	13 May 2019 3 June 2019 (extended)		
		<a href="#">Announcement</a>	
		<a href="#">Public Comment Proceeding</a>	
		<a href="#">View Comments Submitted</a>	
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Section I: General Overview and Next Steps			
<b>General Overview</b>			
<p>ICANN organization posted for public comment the proposed agreement for the renewal of the .org Registry Agreement, which expires on 30 June 2019. The proposed .org Registry Agreement is the result of discussion, negotiations and agreement between ICANN org and Public Interest Registry, a Pennsylvania non-profit corporation – the Registry Operator for the .org top-level domain (TLD).</p>			
<p>The proposed .org Registry Agreement is based on the current .org Registry Agreement and incorporates various terms of the approved base gTLD Registry Agreement modified for a legacy TLD. The proposed changes to the .org Registry Agreement are similar to those made in several recently renewed “legacy” gTLD agreements, namely .cat, .jobs, .mobi, .pro, .tel, and .travel.</p>			
<p>ICANN org posted the proposed renewal of the .org Registry Agreement for public comment from 18 March 2019 through 29 April 2019. ICANN org received over 3,200 submissions during this public comment period, which is comparable to a prior .org Registry Agreement renewal comment period in 2006, where over 2,000 comments were received.</p>			
<b>Next Steps</b>			
<p>ICANN org will consider the public comments received and, in consultation with the ICANN Board of Directors, make a decision regarding the proposed registry agreement.</p>			

## Section II: Contributors

At the time this report was prepared, over three-thousand, two hundred (3,200) community submissions had been received. Due to the large number of comments received, not all contributors are identified by name in this report. Contributors consisted of non-profit and charitable organizations, individual registrants, and various community stakeholders and groups. Below is a sampling of organizations and groups that submitted comments, as well as a list of individual contributors whose submissions are quoted in this report. A complete list of contributors and comments can be found at the [View Comments Submitted](#) link. To the extent that quotations are used in the following narrative (Section III), such citations will reference the contributor by their initials as indicated in the below tables.

### Organizations and Groups:

Name	Submitted by	Initials
AICC, The Independent Packaging Association	Michael D'Angelo	AICC
Internet Commerce Association	Zak Muscovitch	ICA
The Center for Association Leadership (ASAE)	John Graham	ASAE
Youth Sports Collaborative Network	Rob Smith	YSCN
GNSO Intellectual Property Constituency (IPC)	Brian Scarpelli	IPC
National Council of Nonprofits	David L. Thompson	NCNP
International Trademark Association	Lori Schulman	INTA
Non-Commercial Stakeholder Group (NCSG)	Rafik Dammak	NCSG
Registrar Stakeholder Group	Zoe Bonython	RrSG
Electronic Frontier Foundation & Domain Names Rights Coalition	Mitch Stoltz	EFF & DNRC
Not for Profit Operational Concerns (NPOC)	Joan Kerr	NPOC
Collective Group of Non-Profit Organizations*	Briana Thibeau	CGNPO
ICANN Business Constituency (BC)	Steve DelBianco	BC
Tucows Inc.	Graeme Bunton	TC
American College of Osteopathic Surgeons	Carter L. Alleman	ACOS
ICANN At-Large Advisory Committee	Submitted by ICANN Policy Staff in support of the At-Large Community	ALAC
The Centre for Internet and Society, India	Akriti Bopanna	CIS
Foreign Ventures, Inc.	NA	FV

\*Collective Group of Non-Profit Organizations includes the following organizations: NPR, YMCA of the USA, C-SPAN, National Geographic Society, AARP, The Conservation Fund, Oceana, National Trust for Historic Preservation.

### Quoted Individual Contributors:

Name	Affiliation (if provided)	Initials
Akbar Ibrahim	NA	AI
Kevin Jackson	bizZone	KJ
Chad Hunter	NA	CH
Michael Ellars	NA	ME
A submission from "AT Domain Admin"	Anonymous Contributor	AC
Peter Taylor	NA	PT

Thomas Hruska	CubicleSoft	TH
Shane Tews	Logan Circle Strategies & American Enterprise Institute	ST
Michael Judd	NA	MJ

### Section III: Summary of Comments

*General Disclaimer:* This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above in the “Important Information Links” section (View Comments Submitted). Comments received after the closing date of 29 April 2019 may not have been included in the summary and analysis of this report.

ICANN org received over 3,200 comments concerning the proposed renewal of the .org Registry Agreement. ICANN org appreciates the considerable amount of participation in this proceeding and is grateful to those who provided their feedback and suggestions.

Given the amount of feedback received, it is not practical to capture every comment or theme of agreement, opposition or new ideas. As such, this public comment summary and analysis only identifies areas with a substantial number of similar comments and excludes comments unrelated to the proposed renewal.

A complete list of the public comments received can be found via the [View Comments Submitted](#) link.

Comments submitted generally relate to the following themes: (i) removal of the price cap provision, (ii) inclusion of Rights Protection Mechanisms (RPMs), and (iii) the registry agreement renewal process.

#### The Removal of the Price Cap Provision

A primary concern voiced in the comments was with respect to the proposed removal of the price cap provisions. This provision in the current .org registry agreement limits the wholesale price of domain name registrations and the allowable price increases for domain name registrations by the registry operator to the registrars. Commenters with this concern largely consisted of individual registrants, registrants writing on behalf of a non-profit organization(s), and organizations who serve the interest of registrants.

Commenters provided a variety of reasons for concern about the price cap provision removal. Many commenters indicated the existing pricing protections should remain in part because they believed legacy TLDs, and the .org TLD in particular, are unique and should be treated differently than new gTLDs. They expressed that the .org TLD, and legacy TLDs in general, are viewed as public trusts and should be protected and managed as such. In addition to its history as a legacy TLD, commenters noted that the .org TLD is also unique in that .org was developed, cultivated and established over decades as catering to non-profit and similar

charitable organizations. Commenters also indicated that organizations and individuals who have historically registered legacy domain names did so under the assumption that prices would not suddenly increase.

*“the .org gTLD has assumed the reputation as the domain of choice for organisations dedicated to serving the public interest... We have come to rely on this reputation to help distinguish the online presence of our organizations from the online presence of organizations that are not intended to serve the public interest. As nonprofit organizations, we also have come to rely on the certainty and predictability of reasonable domain name registration expenses when allocating our limited resources.”*  
– CGNPO

There was also a concern that without price controls, prices to renew domain names could become prohibitively expensive and the barrier to entry for small non-profits and organizations could be significantly raised, leading to a significant negative impact on the non-profit, charitable and small organizations who are registrants of the .org TLD.

*“The org TLD is overwhelmingly used by non-profits and by removing the caps on the prices of org domains, ICANN will make it significantly more difficult for non-profits to do business on the internet or raise barriers to entry for new non-profits.”* - AI

Commenters also raised concerns about the burden and costs associated with moving their web presence to another TLD, which could potentially be capitalized on by the registry operator with higher renewal prices without a price cap.

*“While individual domains are typically inexpensive, the costs of switching between them for an organization can be exceptionally high. Moving from one TLD to another might require notifying clients, reprinting materials, updating databases, and reconfiguring services. Consequently as consumers are locked in, there either needs to be competition at the registry level, or some form of price constraint. Given the nature of the contracts, specifically presumptive renewal for the incumbent registry operators, registry prices are not subject to competition and do not face the downward pricing pressure that every other provider of Internet infrastructure faces.”* – TC

Additionally, commenters expressed their perception that the .org TLD’s registry operator is inherently positioned as a monopoly, and because of this environment, consumers require regulatory pricing protections.

*“Having one company able to control pricing for an entire TLD, and to have no restrictions, controls or guidelines on their ability to increase the pricing: is in my opinion creating a monopoly, with all that implies - definitely counter to the idea of a free market. Especially in the area of .org, which is traditionally - and branded - to be the domain for not-for-profits...”* - KJ

Commenters also conveyed their concern that ICANN org is only acting in the interest of contracted parties by removing the price cap provision. Some suggested that ICANN org may also be benefitting financially from the removal of the price cap provision.

*“Who benefits from the increase in pricing? Will the service performance increase, NO, will the profits to the company running the TLD increase, YES, will ICANN see*

*more money to spend on 5 star resort gatherings or hire more pawns to accomplish nothing, YES...” – CH*

Commenters also noted that the protections afforded to registrants in the Base gTLD Registry Agreement fall short of what they believe should be in place for the .org TLD and believed they should not be viewed as a viable replacement to the existing price cap provision.

*“It can also be argued that existing .org registrants are somehow “protected” because they can renew their .org domain name for ten years before being subjected to uncapped price hikes under the Proposed Renewal Agreement. The fact is however, that there is no requirement that registrants be expressly notified that they had better register for ten years in advance or be subject to unknown, indeterminate, and potentially game-changing renewal costs. As such, it is likely that millions of charities and non-profits will not take advantage of the ability to renew for ten years... [O]nce caps are removed, once the initial ten-year period has elapsed, every single registrant is subject to untold, indeterminate, and potentially substantial price hikes, meaning that this is nothing but a temporary reprieve. Lastly, the numerous prospective .org registrants who want to establish themselves in the most appropriate registry for a charity or non-profit at some point in the next ten years, could find themselves subject to capricious and expensive registration fees for .org domain names and as such receive no benefit whatsoever from the temporary reprieve.” – ICA.*

Commenters also expressed concerns about how the removal of the price cap provision would impact international communities and charitable organizations that come from developing or underdeveloped regions.

*“The internet is slowly removing barriers for organizations to network internationally, especially in Africa and other poorer counties, however currency exchange rates remains an obstacle for non-profit and other organizations in countries with weak currencies... By removing price increase limitations, ICANN will merely exclude the poor from the much needed international support they so desperately need.” – AC*

Commenters questioned whether ICANN org conducted an economic study or research on the potential market implications of removing the existing pricing protections.

*“The RrSG is concerned that ICANN has arbitrarily chosen to remove pricing restrictions that could negatively impact current and future registrants of .ORG, .BIZ, and/or .INFO domain names where there is no reasonable competition to influence reasonable pricing and without engaging in appropriate market analysis.” – RrSG*

Others suggested that perhaps ICANN org should re-evaluate pricing protections in the Base Registry Agreement and impose similar price cap provisions across all TLDs.

*“Indeed, it is disappointing that the base registry agreement should not favour the many over the few, and this is what I mean when I say that the justification seems to be back-to-front. Equitable treatment would be equally well served, if not better, by requiring price stability in all gTLDs.” – PT*

Another concern noted was that the removal of the current price cap provisions in the .org TLD would also set a precedent for the lifting of pricing protections on .com and .net TLDs.

*“this proposed change is easily perceived by myself and many others as testing the waters for similarly transitioning .net and then .com to the base pricing model. The Registry for .com and .net is Verisign, Inc., which is a publicly traded company on NASDAQ (VRSN). That alone is what makes this proposal for changing the pricing model for .org a very slippery slope that should not be pursued.” – TH*

Comments in favor of the removal of the price cap provision in the .org Registry Agreement indicated that ICANN org is not and should not be a price regulator. They also pointed to protections that will be made available via the terms incorporated from the base Registry agreement and indicated they felt the market was healthy and competitive enough to move to market-based pricing for the .org TLD.

*“While ICANN is not a regulator, it has had its contracts reviewed by the DOJ’s antitrust division, which concluded that only .com had market power in the domain space. Allowing .org and future domain names to move to market-based pricing makes sense with today’s healthy TLD market, which is populated with many choices for consumers to choose from.” – ST*

*“Moreover, the new Base Registry Agreement guarantees that current registrants have the right to lock in current domain prices for their renewals. Both .ORG and .INFO will be required to give 6 months of notice before increasing domain renewal prices, and must allow registrants to lock-in current prices for up to 10 years... The ability to lock-in prior prices for 10 years is valuable to a business registrant who has invested in a domain name for branding, labeling, and marketing materials. In the longer term, business registrants seek predictability about renewal costs for their domain name(s).” – BC*

### **The Inclusion of Rights Protection Mechanisms (RPMs) in legacy gTLDs**

Commenters including registrants and organizations who advocate on behalf of registrants expressed concern over the addition of RPMs, including Uniform Rapid Suspension (URS), into legacy gTLD registry agreements on various grounds. Those who were opposed to including the RPMs pointed out that RPMs are not consensus policy for legacy gTLDs, and they believed that incorporating RPMs into legacy gTLD registry agreements should be halted until the RPM working group completes its review of the RPMs and comes to its final recommendations. These commenters also expressed the concern that ICANN org is setting substantive policy for gTLDs by adopting elements of the Base gTLD Registry Agreement into amended and renewed registry agreements for legacy gTLDs.

*“Procedurally, it is inappropriate for the ICANN organization to impose these mechanisms on .org, a legacy TLD that dates from the earliest days of the domain name system. Such a move must come, if at all, from the ICANN community after an evidence-based discussion. ICANN staff have presented no evidence of any need for Trademark Claims and URS in the .org TLD.” – EFF and DNRC*

Commenters in favor of the addition of enhanced rights protection mechanisms in the .org Registry Agreement applauded Public Interest Registry for electing to include the provisions.

*“The IPC generally supports the transition of ‘legacy’ TLDs to a version of the base Registry Agreement, particularly given that the transition involves a partial adoption of Rights Protection Mechanisms (RPMs) designed for the release of gTLDs in 2012. The IPC also supports the inclusion of Public Interest Commitments and Registry Operator Code of Conduct in the proposed .ORG Registry Agreement.” – IPC*

### **The Registry Agreement Renewal Process**

Another concern raised by commenters was the process ICANN org has followed to renew legacy registry agreements. Specifically, commenters suggested the need for greater community input at earlier stages of the negotiation process.

*“ICANN should seek community input before negotiating registry agreement renewals. These proposed agreements were already negotiated and agreed by ICANN and Afiliias (for .INFO) and Public Interest Registry (for .ORG). At this point, ICANN seeks public comment not to renegotiate these agreements, but only to make a report of public comments ‘available for the ICANN Board in its consideration of the proposed renewal agreement.’... The BC again asks ICANN to solicit community input before it enters negotiations with contract parties, so that ICANN understands the priority concerns of business users and registrants when it negotiates on our behalf.” – BC*

Others felt that a competitive registry operator bidding process should be instated in place of presumptive renewal of the agreement.

*“If ICANN wants to remove price restrictions in the name of deregulation than they need to open up the tender process so that groups that believe they can provide the required level of service for lower prices that PIR currently charge are allowed to compete.” – MJ*

## Section IV: Analysis of Comments

*General Disclaimer:* This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

As the .org Registry Agreement neared its expiration, ICANN org followed the established practice of offering the Registry Operator the option of migrating to the Base gTLD Registry Agreement for the legacy gTLD. Recent legacy gTLD agreements renewed according to the Base gTLD Registry Agreement include .cat, .jobs, .mobi, .pro, .tel and .travel. ICANN org migrates legacy TLDs to the Base gTLD Registry Agreement as it provides additional safeguards and security and stability requirements which are more robust than what exists in legacy agreements. Additionally, the Base gTLD Registry Agreement lays the framework for consistency for registries, registrars and registrants, and provides for operational efficiencies for ICANN org.

### **The Removal of the Price Cap Provision**

The Base gTLD Registry Agreement does not include the price cap provisions which are in the current .org agreement. The price controls for .org were initially included years ago by the US government when the domain name market consisted only of a handful of top-level domains. There are now over 1200 generic top-level domains available, and all but a few adhere to a standard contract that does not contain price regulation. Removing the price cap provisions in the .org Registry Agreement is consistent with the Core Values of ICANN org as enumerated in the Bylaws approved by the ICANN community. These values guide ICANN org to introduce and promote competition in the registration of domain names and, where feasible and appropriate, depend upon market mechanisms to promote and sustain a competitive environment in the DNS market.

Aligning with the Base gTLD Registry Agreement would also afford protections to existing registrants. The registry operator must provide six months' notice to registrars for price changes and enable registrants to renew for up to 10 years prior to the change taking effect, thus enabling a registrant to lock in current prices for up to 10 years in advance of a pricing change. Enacting this change will not only allow the .org renewal agreement to conform to the Base gTLD Registry Agreement, but also takes into consideration the maturation of the domain name market and the goal of treating the Registry Operator equitably with registry operators of new gTLDs and other legacy gTLDs utilizing the Base gTLD Registry Agreement.

ICANN org will consider the feedback from the community on this issue.

### **Registry Fees**

ICANN org would also like to clarify a few points raised in the comment forum. The registry fees paid to ICANN org are not directly tied to the domain name registration price. The proposed registry fees include a fixed amount of US\$6,250.00 per calendar quarter and a fixed transaction fee of US\$0.25 multiplied by the number of annual increments of an initial or renewal domain name registration without regard to the specific pricing of .org domain name registrations.



## **The Inclusion of Rights Protection Mechanisms (RPMs) in legacy gTLDs**

In the case of the proposed renewal of the .org Registry Agreement, as well as other legacy gTLD registry agreement renewals (namely, cat, .jobs, .mobi, .pro, .tel, and .travel) inclusion of the URS was agreed to via bilateral negotiations between the applicable Registry Operator and ICANN org. ICANN org has not moved to make the URS mandatory for any legacy gTLD. Additionally, there is nothing restricting registry operators from imposing additional RPMs in other ways.

## **The Registry Agreement Renewal Process**

In the registry agreement renewal process, negotiations are initiated between the two contracted parties. ICANN org and the registry operator engage in renewal discussions, where both parties consider whether to renew the agreement in its current form or transition all or part of it to the Base gTLD Registry Agreement. Once the parties are in alignment on the form of agreement, a draft renewal agreement is produced by ICANN org for the review and comment of the registry operator. After both parties agree on the terms of the proposed renewal registry agreement, ICANN org invites the community to comment on the agreement, through the public comment process, in order to collect valuable community input before proceeding. The proposed renewal of the .org Registry Agreement is a result of this established process. The Base gTLD Registry Agreement, which the proposed .org Registry Agreement renewal is proposed to align with, was developed with substantial community input via the open and transparent multi-stakeholder approach.

## **Next Steps**

ICANN org will consider the public comments received and, in consultation with the ICANN Board of Directors, make a decision regarding the proposed registry agreement.