ICANN's Public Comment Period is Broken: Serious Concerns to the ICANN Public Comment Process and Continual increase of .COM Prices

Introduction

ICANN is currently in the process of renewing the .COM Registry Agreement with Verisign, which has raised significant concerns regarding ICANN's transparency and fairness. While the agreement is currently open for public comment, **it is important to recognize that this process has historically lacked genuine community engagement from the ICANN organization**. ICANN's pattern of setting agreements in stone before seeking community feedback raises questions about the effectiveness of public comment periods.

TurnCommerce would like to share our concerns with the hope that ICANN will take meaningful steps to ensure transparency, accountability, and a fair process for all stakeholders in the renewal of the .COM Registry Agreement.

Background

ICANN claims its public comment process is a "*vital part of our multistakeholder model*"[1] and "*an opportunity for the ICANN community to effect change and improve policies and operations*"[2] and "*an important step in the renewal of registry agreements before ICANN's Board consideration*" to "inform the Board discussion and decision-making."[3]

However, prior public comment periods have held a significant volume of consistent messages around perpetual renewal agreements: ICANN should be putting TLD agreements out for competitive tender; ICANN should impose strict price caps; ICANN should be conducting economic studies or requiring cost-justification for any fee increases. The community has voiced its concerns and feedback to ICANN for years on these topics, yet ICANN has been unwilling to listen to date.

Public comment issues date back to the 2006 settlement agreement between ICANN and Verisign. As ICANN board member Susan Crawford said "*ICANN has often appropriately claimed that its legitimacy is founded on its bottom-up private policy generation. To sidetrack this experiment in private rule-making by allowing a single litigious registry to get a better deal than others undermines ICANN's core mission. ICANN should strive to be a model of*

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[1] https://www.icann.org/en/public-comment/about
[2] Id.
[3] https://www.icann.org/fr/public-comment/proceeding/com-registry-agreement-renewal-27-03-2012

private self-governance."[4] Another board member who voted against the ICANN/Verisign settlement said he was "*concerned about the almost unanimous outcry from the community*" and that "*I have become very much concerned about the consequences of the lack of support at this time in the community*" and that "*it was all negotiated behind closed doors.*"[5]

But ICANN and Verisign reached a settlement agreement which completely changed the competitive landscape for the DNS industry.

As Susan Crawford said in her March 2, 2006 statement:

> "*... the proposed VeriSign registry agreement will undermine ICANN's effectiveness. We seem to be trading off the support offered ICANN by those active in ICANN processes in favor of our budgetary needs. No constituency within ICANN has supported this arrangement, and most (not all with monetary aims) have opposed it. Although I am sympathetic to ICANN's need for funding, this particular tradeoff does not seem wise. I am not saying that we should be ruled by a mob. But this is not a mob: these are the people and the groups that are likely to be active in supporting or undermining ICANN's legitimacy in international fora in the years to come. Their views are relevant. We have not adequately taken them into account.*"

Had ICANN taken into account the community's view on entering into a perpetual no-bid agreement with Verisign, we would not be in this situation today. **The multi-stakeholder model works - but only if ICANN is willing to listen to stakeholders.**

As a result, the community has fatigue and has all but given up. Many have labeled the public comment process as a "*sham*"[6], and everyone knows that ICANN will simply do what it wants and move forward with its predetermined decision.

Key Issues

1. Lack of Transparency in Public Comments

[4] https://archive.icann.org/en/topics/vrsn-settlement/board-statements-section2.html
[5] Id.
[6] Merlin, 2001: https://forum.icann.org/nsi2001/3A9EBFE300000097.html; George Kirikos, 2019: https://freespeech.com/2019/08/20/icann-public-comment-periods-are-a-sham-all-public-comment-periods-should-be-suspended-until-a-full-investigation-has-occurred/; Michael Karanicolas, 2019: https://law.yale.edu/isp/initiatives/wikimedia-initiative-intermediaries-and-information/wiii-blog/what-purpose-icanns-comment-periods; Namecheap IRP 19-2, 2019: https://itp.cdn.icann.org/en/files/board-meetings/briefing-materials/briefing-materials-1-redacted-21nov19-en.pdf; Ip Justice 2021: https://www.ipjustice.org/digital-rights/ip-justice-comment-on-request-to-icann-from-red-cross-olympic-committee-to-ban-others-use-of-words-in-domain-names/; Politico 2021: https://subscriber.politicopro.com/f/?id=00000180-0057-dbc2-a7c6-697731f40002; ICA 2023: https://www.internetcommerce.org/wp-content/uploads/ICA-Letter-to-ICANN-Board-of-Directors-June-27-2023-Re-Public-Comments-on-.NET-Renewal.pdf

- **2020 Public Comments Disregarded**: ICANN and Verisign entered an agreement in 2020, which was conducted four years early and not required. Despite **99.9% of public comments opposing the .COM price increase** (9,026 comments were submitted), ICANN proceeded with the increase, lifting the previous price freeze and completely ignoring massive stakeholder opposition.[7] [8]
- **Despite Being a Multi-stakeholder Model**: Although ICANN operates under a multi-stakeholder model, it once again negotiated the 2024 .com Registry Agreement renewal terms with Verisign in private. This negotiation, conducted outside the multi-stakeholder process, resulted in the agreement being presented to the public only after terms were finalized. Past experience suggests that ICANN will disregard public feedback and ultimately align with Verisign's interests over the public's.

2. Questionable Notice of Current Public Comment Period

- **Lack of Advance Notice**: The public comment period for the .COM contract renewal was **not listed among upcoming proceedings** on ICANN's official list.[9] [10] This inconsistency raises serious questions about the **level of collaboration between ICANN and Verisign** which necessitated the avoidance of notifying the public of an upcoming comment period. This contract is the largest contract that ICANN will ever have awarded, worth $10.8 billion dollars, and seemingly was coordinated 'under the radar.'
- **Potential Collusion**: Such actions suggest a continually inappropriate relationship between ICANN and Verisign. It is critical that the ICANN Board take immediate steps to address these concerns and ensure full transparency in its agreements with Verisign, including **asking why there was no advance notice to this one specific Public Comment period, against the foundational cores of how ICANN works**. The questionable history of these agreements, beginning with the controversial 2006 .COM Registry Agreement, highlights the need for ICANN to demonstrate that it is operating in the best interest of the public, rather than perpetuating a monopoly for monetary rewards in return. ICANN must hold itself accountable to the principles of transparency and fairness that it was founded upon.

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[7] Zak Muscovitch, Report and Analysis of Public Comments Submitted to ICANN on the .COM Pricing Provisions (Part I), "*approximately 99.9% of members of the public who were against the Proposal*", https://circleid.com/posts/20200306_report_and_analysis_of_public_comments_submitted_to_icann_part_i

[8] Zak Muscovitch, Report and Analysis of Public Comments Submitted to ICANN on the .COM Pricing Provisions (Part II) https://circleid.com/posts/20200306_report_and_analysis_of_public_comments_submitted_to_icann_part_ii

[9] ICANN Public Comment Upcoming Proceedings https://www.icann.org/en/public-comment/upcoming-proceedings

[10] Internet Archive https://web.archive.org/web/20240000000000*/https://www.icann.org/en/public-comment/upcoming-proceedings

3. Perception of Public Comment Periods as Ineffective

- **Community Concerns**: It is a well-known fact that ICANN **does not consider public feedback valuable.**[11]
    - For example, thousands of valid comments were previously dismissed as "*spam*" during a similar price removal in the .Org TLD in 2019.[12] Such repeat issues in the ICANN public comment period time and time again has demoralized stakeholders from wasting time in participation in ICANN Public Comment Periods.
    - As cited above, 9,026 public comments unanimously opposed .Com price increases in 2020, but these comments were completely ignored by ICANN.
    - In 2011, 2017 and again in 2023 the .Net contract went out to ICANNs public comment process. And as usual, ICANN pre-negotiated these terms and in none of these comment periods did ICANN make any changes based on feedback received during the comment period.
- **There is Burnout From the Community**: The community has grown weary and disillusioned with ICANN's public comment process, feeling as if their voices go unheard. For years, stakeholders have invested their time and effort into providing copious feedback, only to see it dismissed—regardless of the scale of opposition. With ICANN's established pattern of disregarding even widespread concerns, many now view participation as a futile exercise. As a result, public engagement has dwindled, with fewer stakeholders willing to expend effort on a model they perceive as fundamentally broken.

4. The Overhauled Public Comment Process Will Significantly Reduce Feedback

- **ICANN now requires participants to create accounts and agree to Terms of Service to submit comments**. This new change to the ICANN public comment period creates unnecessary barriers and further **deters general participation**. ICANN should encourage people outside the ICANN ecosystem to submit public comments. This change now requires the creation of an account, the verification of that account, requiring a confusing form to be filled out, all for people who don't want to maintain another online account. The process is not friendly, unlike the

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[11] George Kirikos, FreeSpeech.com, "ICANN Public Comment Periods are a Sham. All Public Comment Periods Should be Suspended Until a Full Investigation Has Occurred", August 20, 2019. https://freespeech.com/2019/08/20/icann-public-comment-periods-are-a-sham-all-public-comment-periods-should-be-suspended-until-a-full-investigation-has-occurred/

[12] Kevin Murphy, Domain Incite, September 11, 2019, ".org price cap complaints more like "spam" says Ombudsman". https://domainincite.com/24720-org-price-cap-complaints-more-like-spam-says-ombudsman

previous public comment processes which allowed people to simply email their comments to an email list.[13]

- **ICANN's Actions Stifle Engagement**: Between dismissing valid feedback in previous rounds, pre-negotiating terms and making commenting harder, ICANN's approach is **actively working to discourage public input**.
- **Unlike the FTC's public comment period[14]** which was recently streamlined to receive more valuable feedback and input, and has changed to reflect a shift toward more engagement, ICANN's process is working in the opposite direction and only dissuades valuable stakeholder feedback.

5. A Backwards Process: Seeking Feedback Only After Negotiations Are Complete

- **Backwards Timeline**: ICANN has negotiated the contract with Verisign in private, with the **public comment period ending just before the renewal deadline of November 31, 2024**. This allows no opportunity for adjustments based on public feedback. The public comment period ends November 5, and then the Staff report summarizing the comments will be made by November 19. That leaves only six business days, during the Thanksgiving holiday, for ICANN to pivot and do anything different than what it already agreed to behind closed doors.
- **Stakeholders have long called for ICANN to solicit community input before engaging in negotiations**. GoDaddy, for instance, has recommended that ICANN "*build in an opportunity for the community to provide input in advance of ICANN negotiating with Verisign.*"[15] This is essential for ICANN to negotiate effectively and understand community priorities before reaching agreements. Similarly, the Registrar Stakeholder Group (RrSG) expressed concerns that ICANN did not consult the community before negotiating the latest amendment with Verisign. The RrSG emphasized that "*significant and substantial changes to a registry agreement that will have long term and far-reaching impact on the Internet should occur only after consultation with the ICANN community.*"[16] Despite numerous ongoing calls for greater transparency, ICANN has once again proceeded without incorporating stakeholder input beforehand.

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[13] ICANN's 2024 Public Comment Period Link: https://comment.icann.org/forms/proceeding/0d708a9b-7f06-4607-83b5-6128c16f6dde?returnURI=https://www.icann.org/en/public-comment/proceeding/proposed-renewal-of-the-registry-agreement-for-com-26-09-2024

[14] Comment on a Proposed Merger: https://www.ftc.gov/enforcement/merger-review/comment-on-a-proposed-merger

[15] Staff Report on Proposed Amendment 3 to the .COM Registry Agreement https://itp.cdn.icann.org/en/files/registry-agreement/report-comments-com-amendment-3-26mar20-en.pdf

[16] Report and Analysis of Public Comments Submitted to ICANN on the .COM Pricing Provisions https://circleid.com/posts/20200306_report_and_analysis_of_public_comments_submitted_to_icann_part_i

- **Needed for Process Reform**: ICANN needs to **seek public comments before negotiations** happen, not after, to genuinely incorporate community input in the process. Negotiations for the largest TLDs, especially one that is worth over $10 billion dollars, should be done within the multi-stakeholder model, not behind closed doors which only benefits Verisign and ICANN.

6. The Unreasonable 24-Hour Board Approval of the 2020 .COM Contract

- **Rapid Approval Raises Significant Questions**: On March 26th, 2020, ICANN management published a Staff Report summarizing the 9,026 public comments regarding the .COM contract renewal. The comments were overwhelmingly against the proposed changes. **Nonetheless, less than 24 hours after publishing the Staff Report**, on March 27th, 2020, ICANN approved the contract without making a single modification.[17]
- **Superficial Consultation**: The speed of this approval—late on a Friday during the first few weeks of the world's first Stay-At-Home orders for Covid-19—during the beginning of a worldwide pandemic—demonstrates that **ICANN's promised consultative process lacks genuine transparency**. This process afforded no meaningful opportunity for the Board to deliberate or address substantive objections raised by stakeholders. Such actions highlight concerns about **ICANN's regulatory capture** and the limitations of the public comment process within its system.

7. Public Comment Period Timing and the U.S. Election

- **Coinciding with U.S. Presidential Election**: The decision to close ICANN's comment period on **Election Day** (November 5, 2024) raises concerns about timing and transparency. Ending a public comment period on a day of such national importance in the United States will further deter participation, as public attention is understandably focused elsewhere.
- **The ICANN Board should investigate the rationale behind choosing this date**, particularly in light of persistent concerns around transparency in ICANN's public consultation process. Coupled with the absence of this comment period from 'Upcoming Proceedings,' the timing appears questionable, warranting a closer examination of how this comment period was scheduled and whether the process aligns with ICANN's commitment to an open and participatory model.

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[17] Letter from Zac Muscovitch (ICA) to Maarten Botterman (Chairman of the ICANN Board), "Re: Public Comments on Proposed Amendment to .COM Registry Agreement" https://www.icann.org/en/system/files/correspondence/muscovitch-to-botterman-icann-board-02apr20-en.pdf

8. ICANN's "Independent Review Process" (IRP) Lacks Efficacy as an Accountability Mechanism

- **Ineffectiveness of the IRP**: The Independent Review Process (IRP) is intended to allow stakeholders to challenge ICANN decisions that may conflict with its Bylaws or Articles of Incorporation. In 2019, Namecheap filed an IRP over the removal of price caps on the .ORG and .INFO domains. **The IRP panel ruled in favor of Namecheap, determining that ICANN violated its Bylaws** by lifting price caps on these legacy TLDs. However, ICANN has not acted on the IRP Panel's recommendations, treating them as non-binding guidance rather than enforceable directives.
- **Forced Legal Action**: ICANN's decision not to follow the IRP's recommendations ultimately led Namecheap to pursue legal action to enforce the decision. This outcome underscores the limitations of the IRP as a meaningful accountability tool within ICANN, as stakeholders are left with costly legal options as the only way to seek resolution. **This situation further illustrates a recurring pattern in ICANN's approach to TLD contract negotiations**, where public comment periods are held, yet stakeholder input and public interest does not ultimately shape the final decisions.
- **The Panel's Findings**: The panel found that ICANN did not adequately consider the public interest when it removed price caps on .ORG and .INFO TLDs. It also concluded that **ICANN failed to provide sufficient reasoning, that ICANN did not engage in meaningful consultation with stakeholders, and ICANN did not perform an adequate analysis of the competitive effects and potential impacts on registrants from eliminating price caps**. ICANN's treatment of the IRP's conclusions as mere suggestions[18] undermines the IRP process and continues to erode stakeholder trust in the ICANN organization.
- **The Namecheap IRP and Resulting Lawsuit: A Direct Consequence of ICANN's Deficient Public Comment Process**: NameCheap's IRP and its ongoing lawsuit against ICANN is the result of (1) the public comment period that ICANN put out in 2019 regarding the removal of such prices. (2) The public comments that were submitted to ICANN were ignored. (3) Namecheap filed an IRP saying ICANN disregarded extensive public opposition and lacked sufficient transparency. (4) The IRP Panel found in favor of NameCheap. (5) ICANN ignored the IRP Panel's recommendations (5) Namecheap having no other recourse but to file a lawsuit against ICANN — despite the clear message from the global community in 2019 and what was already evident to anyone following the issue. ICANN's public comment process is fundamentally flawed, it is not effectively engaging with the community, and it appears to have strayed from its core values.

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[18] DomainIncite, October 22, 2024.
https://domainincite.com/30474-namecheap-scores-win-in-org-price-cap-lawsuit

9. Lack of Economic Transparency

- **Missing Economic Studies**: ICANN previously committed to conducting and sharing economic studies to inform its decisions. However, key studies—such as Dennis Carlton's reports—have yet to be made available to the public, leaving stakeholders in the dark. It appears ICANN has commissioned economic studies that look at the .Com market and pricing and competition, but it is not willing to share such studies. This lack of transparency further undermines the trust that the community places in ICANN's decision-making process, especially when public comment periods depend on informed, transparent data from the ICANN organization. The **absence of transparency** continues to destroy stakeholder trust.[19] [20]
- **Competitive Review Needed**: ICANN must turn over all economic studies it has conducted[21] and ensure decisions are driven by comprehensive, independent analysis and the results "*should be considered by the community*"[22]. Not one-sided reports in favor of ICANN's largest rate-payers.

10. ICANN's Financial Interests Appear to Be the Priority

- ICANN's persistent disregard for community feedback has led to the current issues with registry agreements. **By prioritizing ICANN's own financial interests over the community's concerns**, ICANN continues to ignore the valuable input that could guide it toward fairer, more competitive agreements.
- If ICANN had heeded the community's feedback on issues such as perpetual no-bid agreements, price caps, and competitive bidding, it would not be in the current predicament. **A multistakeholder model only works if the governing body listens to its stakeholders**; otherwise, it risks eroding trust and the foundation of its legitimacy.

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[19] Kevin Murphy, DomainIncite, September 29, 2023. "*Palage claims the domain industry of being "on the precipice of becoming a cartel" due to recent consolidation, and says that is being enabled by ICANN's failure to conduct an economic study of the market.*"
https://domainincite.com/29098-palages-epic-rant-as-he-asks-icann-to-cancel-verisigns-net-contract

[20] Michael Palage, July 30, 2023, "*The failure of ICANN to have the contractual authority to undertake a full economic study to ensure a "competitive environment in the DNS market" undermines one of its core values.*"
https://www.icann.org/en/system/files/files/reconsideration-23-1-palage-request-redacted-31jul23-en.pdf

[21] Deborah A. Garza (Acting Assistant Attorney General), DOJ Antitrust Division letter to Peter Dengate-Thrush, Chairman of the ICANN Board, December 18, 2008. "*we would like to call to your attention a decision of the ICANN Board in October 18, 2006, that called for an economic study to address questions such as: whether the domain registration market is one market or whether each TLD functions as a separate market … what are the effects on consumer and pricing behavior of the switching costs involved in moving from one TLD to another … ICANN needs to complete this economic study and the results should be considered by the community*"
https://www.ntia.gov/sites/default/files/publications/icann_081218_0.pdf

[22] see Id

11. Inappropriate Use of Verisign's Biased Blog Post in ICANN's Public Comment Process

- **Verisign's 'Myths Versus Facts' Blog Post**: In its announcement for the public comment period,[23] ICANN linked to an article by Verisign that promotes **factually questionable and self-serving information**.[24] This raises concerns, as ICANN seemingly accepted Verisign's claims without independent analysis, using Verisign's rhetoric to justify potential fee increases. If ICANN lacks an economist on staff, the organization should at minimum engage independent economic expertise to ensure the accuracy and neutrality of such claims before including them in public announcements. This omission raises serious questions about ICANN's commitment to transparency and impartiality in representing community interests.
- **Need for a 'Core Values' Review**: ICANN must reassess why it appears to prioritize the interests of its largest ratepayers and engage in non-transparent negotiations over community-focused objectives. Referencing unverified, biased material like Verisign's blog post in public comment periods without independent review further undermines trust in ICANN's processes. Failing to uphold these standards erodes ICANN's credibility as a trusted steward of the internet.

Conclusion

It is deeply concerning to observe how ICANN is conducting itself. We seem to be in a landscape where stakeholders' influence is limited, with key decisions being advanced by ICANN without meaningful engagement. At what point will ICANN acknowledge its responsibility to the broader community and recognize its obligation to genuinely consider stakeholder input? ICANN's actions increasingly appear at odds with the stewardship expected of an organization that values public input and transparent feedback.

We envision a world where ICANN can realign itself with the role of a true steward of the Internet—one that listens to public comments, operates with accountability, and is free from undue influence. This would be an ICANN that truly serves the public interest, rather than primarily accommodating its largest funder.

[23] ICANN, "Update on the Proposed .COM Registry Agreement Renewal", September 26, 2024 https://www.icann.org/en/blogs/details/update-on-the-proposed-com-registry-agreement-renewal-26-09-2024-en
[24] Pat Kane, Senior Vice President Verisign, "Setting the Record Straight – Myths vs. Facts about .com", August 13, 2024 https://blog.verisign.com/domain-names/myths-vs-facts-about-dot-com/