October 1, 2024

To ICANN:
From: David Newhoff
Re. Proposed Renewal of the .COM Registry Agreement (RA)

I write to encourage ICANN to consider addressing secondary market activity that adversely affects .com registrants. As a small business owner, I believe that common-sense contractual and policy changes can benefit small businesses and individuals who rely on the .com domain extension to establish and maintain an essential online presence.

Last year, I submitted a comment to NIXI regarding proposed changes to the registration rules for India's ".IN" top-level domain. I believe that comment is relevant to the ongoing discussions regarding .com registration, and I have copied those full remarks below. NIXI had received sharp criticism from the U.S.-based group Internet Commerce Association (ICA) for proposed rule changes that would have prioritized the interests of small-business and individual registrants over speculators who buy and hold domain names for resale. I believed then, as I do now, that ICA's criticism was misguided and did not reflect the views of the vast majority of domain name registrants.

As I said at the time: "I would respectfully submit that what makes a domain like .IN vibrant is not hundreds of thousands of parked domain names, but domain names being used by India's business owners who will provide unique websites owned by real people and companies using .IN to build their brands for the long term." The same is clearly true for .COM, and I believe thoughtful policy, such as that proposed by NIXI could benefit .com just as NIXI's policy proposal stood to benefit .IN. Indeed, the difficulties caused by domain speculation would presumably be more acute for .COM, given the overwhelming popularity of the domain. Moreover, the fact that the .COM price is regulated at the wholesale level provides little relief for the startup business when price is unregulated at no other point in the delivery of domains from the wholesaler to the end user.

I was encouraged to see that the National Telecommunications and Information Administration (NTIA) and Verisign are finally discussing how secondary market pricing affects the .COM ecosystem, though I am somewhat surprised that no changes were made to the .COM RA to address this well-known issue. I understand from the ICANN blog that ICANN is not a price regulator. And if that is the case, then perhaps it falls to the NTIA and other U.S. Government agencies to extend .COM price regulations to include both the wholesale and the currently unregulated secondary market.

While I understand that secondary market operators may not be subject to the same regulatory rigor as the .COM primary market, pro-consumer, contractual solutions such as the one offered by NIXI would seem to be well within the scope of NTIA's authority over .COM. If the purpose of .COM price regulation is to protect consumers, it makes sense that such protection should be extended through the entire delivery system of domain names—from wholesaler to retailer to secondary market operators.

Other nations seem to understand that domain speculation can stifle new enterprise. Earlier this month, it was reported that Andorra Telecom – which is making Andorra's ".AD" domain publicly available worldwide—would institute its own rules to favor registrants who intend to establish and build an online presence over those who are registering .ad domains simply to resell them at a markup. This is an instance in which ccTLDs and their administrators are leading the way in showing the world how to foster a domain name ecosystem that benefits the majority of good-faith internet users, rather than a system which is heavily tilted in favor of speculators.

Even if it is not within the scope of this proceeding, I urge ICANN to take up this question and explore common-sense policies for .COM and all top-level domains that would better reflect the intended and original purpose of the domain name system. I'm not a regulatory lawyer, but policies such as those being adopted by Andorra and India do not strike me as crossing the line into "price regulation," and I believe ICANN should do everything in its power to adopt and adapt these sound ideas to serve the best and most innovative internet users. If this is a responsibility best left to government regulators, I would urge NTIA and the Department of Justice to act in support of the truly entrepreneurial domain name registrants.

Thank you for your consideration.

Sincerely,

David Newhoff

DavidNewhoff.com
The Illusion of More
RightsClick, Inc.

Here is the comment I submitted to NIXI in 2023:

An Entrepreneurial Perspective on NIXI's Proposal to Amend .IN Registry Conditions

19 July 2023

Attn: Mr. Shri Anil Kumar Jain, CEO
RE: Draft Amendments in Terms and Conditions for Registrants

Dear Mr. Jain:

I read with interest the response of the US-based Internet Commerce Association (ICA) to NIXI's proposed draft amendments to the terms and conditions for India's .IN registry. In reading those comments, which were broadly critical of NIXI, and widely publicized by ICA in the US media, I thought NIXI leaders might consider some context about ICA and an alternate point of view on the proposed draft amendments. By way of background, I am a US-based writer, communications professional, IP rights advocate, and an entrepreneur. In fact, the startup I co-founded had some experience with apparent domain scalping during the formation of our business.

Finding a name for an enterprise that is both a solid brand and available is not easy in a world with 1.13 billion websites. When we started our company, a prior party had abandoned the trademark, which meant we were allowed to register the name with the USPTO, but the .com domain name was still in limbo—unused and with an expiration date that my business partner monitored. When he contacted the registrar, he was told that the previous owner had a grace period to renew the name, but somehow, the moment that period passed, another party was suddenly in possession of the name.

Fortunately, a well-crafted email affirming our trademark registration and our seriousness induced the other party to let the name go, but this is rare. As our trademark attorney told us, many of her clients have paid exorbitant prices to obtain or regain the ability to use their registered trade name as their primary domain name. Legitimate owners should have the right to sell a domain name like any other asset, but what is often referred to as domain name "investing" seems to describe something between an ethically gray side hustle to a form of enterprise-scale extortion that stymies legitimate entrepreneurism.

Had we been less fortunate, it could have cost our startup an unreasonable fee to use a name that was legally ours, or we would have had to abandon the .com domain. This can put a new business in a quandary: use limited resources to pay a high fee for a name or wait until there is more revenue at which point, the price will be even higher. So, regarding NIXI's intent with this amendment, it should recognize that our experience is common for many entrepreneurial ventures with limited resources—ventures that are more vital to a nation's economy than the trade in parked domain names.

I would, therefore, emphasize that ICA does not speak for a majority of internet users, a majority of domain name registrants, or, presumably, for the majority of people who are interested in seeing the .IN domain thrive as a vibrant space for commerce, creativity, and expression. ICA represents those in the business of buying and selling domains, including domain name "investors" or speculators who control a disproportionately large number of valuable domain names as well as certain registrars such as GoDaddy. Studies estimate that the secondary market for domain names is a billion-dollar industry globally.[1]

Although ICA's response includes important questions relevant to drafting the amendment(s), its general warning to reverse course to avoid economic calamity seems more than a little overstated. ICA advocates the interests of its members, and its members benefit from the fact that domain name speculators can acquire and park volumes of names to resell at premium prices that can reach five, six, and even seven figures.

Given the broad brush applied in ICA's condemnation of the proposed amendment, it is possible that its members are blind—or willfully blind—to the potential harm that domain name speculation can cause to entrepreneurs, artists, and millions of content creators. From the tone adopted, one might almost believe that the secondary market in domain names is more valuable to India's economy than the innovation and entrepreneurism that may be needlessly hindered when the first hurdle a business faces is the ability to use its own name.

ICA warns that the proposed policy change will stifle the growth of .IN, but I would respectfully submit that what makes a domain like .IN vibrant is not hundreds of thousands of parked domain names, but domain names being used by India's business owners who will provide unique websites owned by real people and companies using .IN to build their brands for the long term. I do not begrudge ICA its right or obligation to advocate on behalf of its small and distinctive membership, NIXI should proceed with an understanding that their motives are not necessarily aligned with the majority of internet users, and indeed, the majority of ordinary domain name holders like me or the many entrepreneurs whose rights and interests I have advocated for more than a decade.

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[1] https://www.forbes.com/sites/roslynlayton/2021/03/23/mit-researchers-estimate-the-value-of-domain-name-system-dns-at-8-billion/?sh=60e3904f65d2

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Sincerely,

David Newhoff