

Human Rights Gap Analysis for ICANN's Proposed Renewal of .NET Registry Agreement

Final Report

Ephraim Percy Kenyanito
Maryam Lee

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Acknowledgments

Many people helped with this project, and we are grateful to everyone who put in their time and effort to make it a success.

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About the CCWP-HR

The CCWP-HR is a multistakeholder forum currently chartered as a sub-entity of the Non-Commercial Stakeholder Group (NCSG) within the Generic Name Supporting Organisation (GNSO) but remains open to the rest of the Internet Corporation for Assigned Names and Numbers (ICANN) community for research and discussion on the relationship between human rights and global Domain Name System (DNS) coordination. This is related — but not limited — to policies, procedures, and operations, with a particular focus on ICANN's responsibility to respect human rights. The primary goal of the CCWP-HR is to provide information, facilitate dialogue, and make suggestions to ICANN Org, its Board of Directors, and the ICANN community on ways to better harmonize ICANN's policies and procedures with internationally recognized human rights laws and corporate social responsibility standards. Membership is open to any interested individual, regardless of affiliation.

About the Authors

Ephraim Percy Kenyanito is a lawyer and researcher at ARTICLE 19, where he works on censorship and business and human rights issues at the Internet infrastructure level. He is a Certified Project Management Professional (PMP), has co-chaired the CCWP-HR since June 2020, and is also an alumni member of ICANN's fellowship program, NextGen@ICANN Program, among other fellowship programs.

Maryam Lee has 10 years of experience in human rights advocacy, policy making, and capacity building to nurture a progressive society. She is trained as an educator and is passionate about development. She is currently working on business and human rights in digital spaces in an effort to harmonize human rights and technology.

Introduction

In May 2023, ICANN published the Proposed .NET Registry Agreement, requesting feedback from the community.

We welcome ICANN's decision to release the document in its entirety, in line with Workstream 2 Recommendations on ICANN Transparency.

We welcome the recommendations in the proposed Agreement, but call for amendments in two sections. First, we oppose the introduction of overbroad powers for Verisign to suspend or block registrants. Second, we urge ICANN to reconsider the abrupt 100% increase in domain prices and recommend that any increase ought to be incremental and predictable to match average annual inflation data.

Scope of powers of the the Registry and ICANN

We note that the proposal gives the Registry new, sweeping powers, as it would allow Verisign, via the new text in 2.7(b)(ii)(5), to "deny, **cancel, redirect, or transfer any registration** or transaction, or place any domain name(s) on registry lock, hold or similar status, as it deems necessary, in **its unlimited and sole discretion**" [emphasis added].

The proposal further describes when it can take the above measures "to ensure compliance with applicable law, government rules or regulations, or pursuant to **any legal order or subpoena of any government, administrative or governmental authority, or court of competent jurisdiction,**" [emphasis added].

These clauses give Verisign the power to censor any website or domain name, without any oversight or accountability. This power could be used to silence dissenting voices, suppress information that is critical of governments or corporations but vital to the public interest, or block access to websites that are deemed to be "offensive" or "controversial", but are nevertheless protected under the right to freedom of expression. Moreover, those who would be impacted by this censorship will have no opportunity to review or appeal these decisions.

We note the following worrying examples of censorship at other layers of the Internet that might be replicated in the DNS if the proposal succeeds:

- a) In 2014, Google was forced to remove the search results for the Tiananmen Square massacre from its Chinese search engine at the behest of the government.
- b) In 2017, Apple was forced to remove the VPN app "ExpressVPN" from its App Store in China at the behest of the government which used a Law passed in January 2017 banning all VPNs that are not approved by state regulators with approved VPNs being mandated to use state network infrastructure.
- c) In 2022, Microsoft was forced to block access to autosuggest features within its Bing search engine in China at the behest of the government.

These cases are just but a small sample of examples that exemplify how this potential for censorship poses a serious threat to free expression and freedom of information, as it undermines the ability of these companies to operate independently and to respect the rights of their users in accordance with their responsibility under the UN Guiding Principles on Business and Human Rights.

Ultimately, these proposed clauses in ICANN's contract with Verisign will harm both individuals and businesses that rely on the Internet, and undermine trust in the availability of information online. For all of these reasons, the proposal must be rejected immediately.

Cost of the Domain Names ("Registry Operator Assessment Fee.")

Secondly, we note that the new contract proposes a doubling of the wholesale price of .NET domains, from \$5.11 to almost \$10. The purpose of the fees is to fund ICANN's and Verisign's operations, including their work on the security, stability, and interoperability of the Internet.

Unfortunately, this price increase has not been properly justified and poses the risk of locking out registrants from using these services altogether.

The Internet has become an essential tool for communication and information sharing. It allows people to connect with others from all over the world, to share their ideas and opinions, and to access information that would otherwise be unavailable. The Internet is also a vital tool for grass-roots journalists and other independent media professionals. It allows them to report on important stories, hold governments and corporations accountable, and give a voice to those who are often marginalized or silenced.

First we note that ICANN mandates via Article 6, Section 6.1 of the Base Registry Agreement, "that a registry operator shall pay ICANN the registry-level transaction fee of US\$0.25 per calendar quarter for each domain name registration." Additionally, the Base Registry Agreement states that, "the registry-level transaction fee shall not apply until and unless more than 50,000 registrations have occurred in the gTLD during any calendar quarter or any consecutive four calendar quarter periods in the aggregate." We note that this 100% increase violates the cost recovery principle that ICANN binds itself to as the rest of the resources are pocketed by Verisign only.

We note that there are various Registries such as .Club which ensure predictability of prices in their registry-registrar agreement; and expressly limiting price increases to 15% total or inflation over the first five years.

An increase in .NET domain fees would make it more expensive for people to register and maintain websites. This would disproportionately impact journalists and other media professionals in developing countries, who use .NET domains in order to do their work and circumvent censorship that is carried out in ccTLD operations.

For example we note examples of Tanzanian independent blogger, Maxence Melo who on 16 December 2016, was charged with Management of a domain not registered in Tanzania under Section 79(c) of the Electronic and Postal Communications Act of 2010, this was as a result of refusing to register an independent news website through the national ccTLD and instead registering the website via .COM which are hosted in the US.

For the reasons above, we urge ICANN to reconsider the proposed increase in domain fees from the current 100% increase. We note that an alternative can be to make it a gradual increase of not more than 8.3% to correspond with [data on annual inflation rates from the International Monetary Fund](#), as this would be a predictable increase and thus allow for registrants to have a predictable rate of adjustment.

Conclusion

CCWP-HR is grateful to have participated in this public comment process in accordance with the November 2019 ICANN Board approval of the FOI-HR.

We welcome feedback on any aspect of this initiative and extend an open invitation to any interested individuals to get involved in the next phase of work. To become a member of the Cross-Community Working Party on ICANN and Human Rights (CCWP-HR), visit [the CCWP-HR page](#) on the ICANN Community website.