

**ICANN Business Constituency (BC) Comment on**  
**[Proposed Renewal of the Registry Agreement for .NET](#)**

**25-May-2023**

**Background**

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter. The mission of the BC is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. Promotes end-user confidence because it is a safe place to conduct business;
2. Is competitive in the supply of registry and registrar and related services; and
3. Is technically stable, secure and reliable.

**Comment**

The BC generally supports the proposed renewal [Proposed Renewal of the Registry Agreement for .NET](#), provided that ICANN and Verisign address questions and suggestions described below.

**1. Registrant and user protections from the Base RA**

The BC supports inclusion in the .NET RA of registrant and user protections from the Base RA. As we [said](#) in 2019 regarding the migration of .ORG and .INFO to the Base RA in place at the time:

[In general, the BC supports the proposed renewal agreements negotiated between ICANN and the operators of .ORG and .INFO because they incorporate important Base Registry Agreement provisions that are valuable to BC members, including rights protection mechanisms, dispute resolution processes, the Registry Code of Conduct, and Public Interest Commitments.](#)

The BC reiterates our support for inclusion of those Base RA elements in renewal agreements for all gTLDs, including the proposed .NET RA. This is especially important in light of the large number of domain names that are registered in the .NET registry.

Moreover, in its Letter of Intent for the [.COM Registry Agreement dated March 20, 2020](#), Verisign recognized the need to show leadership by identifying best practices for mitigation of security threats and adoption of new contract language from the Base RA to address SNS abuse in .COM. However, despite the adoption of best practices by registries like .ORG that embraced the 2019 [DNS Abuse Framework](#), the .COM and .NET registries have not adopted the RA or the DNS Abuse Framework.

The BC also supports proposed inclusion of certain obligations from the [Jan-2023 Global Amendment to the Base gTLD Registry Agreement](#):

- RDAP: require to comply with [gTLD Registration Data Access Protocol \(RDAP\) Profile](#), incl Service Level Requirements for RDAP availability, round-trip and update time.

- The plan to sunset requirements to support WHOIS protocols at the Sunset Date in the new Base RA.
- Updates to URL addresses in the RA and miscellaneous changes.
- Adjustments to the allowable uses by ICANN of the Bulk Registration Data Access (BRDA) to include research purposes.
- Commitments to combat DNS security threats per Base RA Spec 11, Sec 3A and 3B.

## 2. Agreed Restrictions on domain prices and vertical integration

While the Base RA does not have price controls for domain names, the proposed .NET RA maintains price caps. In our 2016 and 2019 comments on Proposed Amendments to Base New gTLD Registry Agreement, the BC said, “it is not ICANN’s role to set and regulate prices”. In [2019](#) we said this about removing price controls for legacy gTLDs moving to the Base RA:

In May-2017 the BC commented on the proposed .NET registry agreement, which did not adopt all of the Base Registry Agreement and retained historical price caps of 10% per year. We noted in that comment, “While the BC does not believe that ICANN should have the role of price regulator in a competitive market, we are comfortable with extending these price controls into the next term of the .NET contract.”

Although we do not support ICANN regulating prices and prefer a genuinely competitive market, the BC was “comfortable” accepting that price controls were willingly negotiated and agreed to by Verisign and ICANN. Given the BC’s established position that ICANN should not be a price regulator, and considering that .ORG and .INFO are adopting RPMs and other registrant provisions we favor, the BC supports broader implementation of the Base Registry Agreement, including removal of price controls.

In keeping with that position, the BC continues to support the price caps that are willingly agreed to by Verisign and ICANN, namely a maximum increase of 10% per year.

And on that same principle, the BC supports vertical integration restrictions that are agreed by Verisign and ICANN, even though such restrictions are not part of the Base RA.

## 3. Definitional limits on Security and Stability for PDP purposes

Both the current and proposed .NET RA and Base RA treat “Security” and “Stability” as defined terms for purposes of operating the registry databases. But when describing Consensus Policy Development that is binding on all contractual parties, the [Base RA](#) uses the terms security and stability *without definitions*, which could allow more flexibility for the PDP process to develop consensus policies to address emerging threats:

1.1 “Consensus Policies” are those policies established (1 )pursuant to the procedure set forth in ICANN’s Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this Specification...

1.2 Consensus Policies and procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:

1.2.1 issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System ;

In contrast to the Base RA, the current and [proposed .NET RA](#) use defined terms for Security and Stability when describing registry obligations to implement duly approved consensus policies:

- (iv) Consensus Policies shall relate to one or more of the following:
  - (1) issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, Security and/or Stability of the Internet or DNS; ([.NET RA](#), p. 3)

Security and Stability are defined on page 8 of the [proposed .NET RA](#), but only for purposes of a “proposed Registry Service”:

**Security:** For purposes of this Agreement, an effect on security by the proposed Registry Service shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of Registry Data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

This could mean that ICANN might not be able to require the .NET registry operator to follow new consensus policies that fall outside the narrow definitions in the .NET RA.

The BC echoes ALAC concerns about using defined terms for Security and Stability that might limit consensus policy obligations for the .NET registry operator. The BC requests that ICANN and Verisign explain why the .NET RA uses defined terms for security and stability as it applies to consensus policies. Depending upon that explanation, the BC may request that the renewal RA for .NET match the Base RA by using undefined security and stability terms for consensus policies.

#### **4. Transparency Reporting of Government Orders**

The BC notes that text in the .NET RA explains that the registry operator reserves the right to follow orders from governments with jurisdiction over its operations or domains. This same text is already in most Registry-Registrar agreements.

The proposed revision to Section 2.7(b)(ii) includes entitles the Registry “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”. The BC recognizes that this provision is substantially similar to other provisions in registry and registrar agreements and in any event is likely

crucial from the Registry's perspective. As such, the BC understands and does not object to this proposed revision.

The BC recognizes that registry operators must be able to follow government orders and laws applicable to their operations. The BC has considered whether the registry operator should also be required to disclose such orders. No other registry operator has a similar disclosure obligation, and the BC concluded that it would be inappropriate to single out the .NET RA to impose such an obligation, especially where no policy work has been done. Unless and until the Base RA is amended to include transparency reporting, the BC has two suggestions for ICANN and Verisign:

1. The BC requests that ICANN and all contract parties jointly develop guidelines to voluntarily disclose government orders they receive, unless they receive a specific government order that prohibits such disclosure. We would support the ALAC proposal that ICANN and contracted parties, explore the development of a disclosure framework for court and government ordered domain takedowns.
2. Verisign and ICANN are proposing to amend their binding [Letter of Intent](#) to add requirements to report to ICANN on security incidents in .COM and .NET. The BC recognizes this may be a valuable new security practice. However, we request that ICANN and Verisign establish parallel requirements to report government orders they receive regarding security issues in .COM and .NET domains, subject to specific government orders that prohibit such disclosure.

## **5. Obligations to address DNS Abuse**

ICANN and contracted parties are close to completing [negotiations on amendments to the Base Registry Agreement and Registrar Accreditation Agreement \(RAA\)](#). These amendments are being developed specifically to create clearer registry operator obligations to address DNS Abuse on domains in the TLD. [need links]. These amendments are expected to be published for public comment in the next 30 days, and would likely be approved before the end of 2023.

The .NET TLD has over 13 million domains, with a share of DNS abuse instances. So the BC is eager to see Verisign incorporate pending DNS Abuse amendments once they are approved by ICANN and Registries. To that point, we recognize that Verisign and ICANN are already proposing to amend their binding [Letter of Intent](#) to incorporate obligations arising from [ongoing DNS Abuse negotiations](#). Specifically, the BC is hopeful that those DNS Abuse obligations will be applied immediately to the .NET RA, as already provided in the LOI for .COM.

## 6. Adoption of Thick WHOIS Consensus Policy

The adoption of the updated EU Directive on Network and Information Security Services in 2022 (NIS2) may have established the legal basis for the maintenance of a thick registry. NIS2, which now carries the effect of [binding law](#), imposes obligations on registries that can be met through the maintenance of thick WHOIS records. As a result, one of the impediments for implementing the Thick WHOIS consensus policy has been removed, and the BC recommends that the .NET agreement include commitments from Verisign to implement the Thick WHOIS policy by a date certain. No further work is needed by the ICANN Community for Verisign to implement Thick WHOIS in .NET, since the [current policy](#) as modified by the GNSO Council on Jan 21, 2021 states that:

*The GNSO Council determines that the Recommendation #7 language, "must be transferred from registrar to registry provided an appropriate legal basis exists and data processing agreement is in place" should be included in the Registration Data Policy in order to conform with the intent of the EPDP Phase 1 Team's policy recommendation and the subsequent GNSO Council adoption.*

Moreover, the current [registration data Consensus Policy](#) requires data protection agreements between ICANN, the Registry, and Registrars:

### 5. Data Protection Agreement

ICANN, gTLD Registry Operators, and accredited Registrars MUST enter into required data protection agreements with each other and with relevant third party providers contemplated under this Policy where applicable law requires. The terms may include legal bases for processing Registration Data.

Where such agreements between Registry Operator or Registrar and ICANN are required to comply with applicable law, ICANN MUST upon request and without undue delay, enter into data protection agreement or agreements with Registry Operator or Registrar as implemented pursuant to this Policy.

If Registry Operator or Registrar determines that such agreements are required by applicable law, it MUST make the request without undue delay pursuant to this policy.

The BC recommends that ICANN evaluate and determine whether NIS2 establishes “an appropriate legal basis” as called for in the above consensus policy now in effect. If so, the BC requests that ICANN, the .NET registry operator, and .NET registrars quickly negotiate the “necessary data processing agreement(s)” to enable Thick WHOIS in .NET “without undue delay pursuant to this policy.”

The BC further recommends that the .NET agreement include commitments to adopt Thick WHOIS and negotiate data processing agreements to enable the transition to THICK WHOIS as soon as possible.

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This comment was drafted by Steve DelBianco, Zak Muscovitch, and Margie Milam.  
It was approved in accord with our charter.