

Namecheap's Comment on the Proposed Renewal of the Registry Agreement for .NET

1. Introduction

Namecheap, Inc. (Namecheap) is a leading domain name registration and web hosting company, and the second largest ICANN-accredited registrar with over 16 million domain names under management. Namecheap welcomes the opportunity to provide a comment on this important matter as it will impact every domain name registrant.

Namecheap, members of the ICANN community, and many individual domain name registrants have previously submitted comments to ICANN regarding the renewal of legacy generic top-level domains (gTLDs). This includes .ORG, .INFO, .BIZ, and .COM¹. The majority of comments submitted by the public raised issues of significant concern, including pricing, market share, payments of millions of dollars to ICANN, and protection of registrants. Although ICANN broadly summarizes these comments in its reports, ICANN essentially ignores the substance and volume of these comments- despite being required by its bylaws to operate in an open and transparent manner while following the multistakeholder model.

In response to ICANN ignoring over 3,000 public comments regarding the renewal of .ORG, .INFO, and .BIZ, Namecheap filed (and won) an Independent Review Panel (IRP) decision against ICANN². The decision held that ICANN should have conducted an economic analysis before removing price controls, and criticized ICANN because:

“[it] does not appear to have given sufficient consideration to the strong public opposition to removal of price controls, especially as to .ORG. While ICANN may have discussed and considered this issue internally, ICANN’s public explanation of its decision did not specifically explain why it concluded that price caps were no longer needed, or take into account any market power that .ORG may have in its particular niche of the domain market.”³

¹ <https://mm.icann.org/pipermail/comments-com-amendment-3-03jan20/attachments/20200214/60b56277/NamecheapcommentreProposedAmendment3.pdf>

² <https://www.icann.org/en/system/files/files/irp-namecheap-icann-final-declaration-redacted-23dec22-en.pdf>

³ Namecheap notes that as of the date of this comment (25 May 2023), despite multiple requests from Namecheap, ICANN still has not provided any formal action (or even progress updates) regarding the IRP panel’s decision regarding the public comment and review process of RA amendments.

Yet again, ICANN is significantly adjusting the price caps of a legacy gTLD without providing any type of economic analysis of the potential impact that increased prices for the second largest gTLD by volume (13.2 million domains) might have on the DNS marketplace.⁴

Although ICANN largely ignores public comments regarding the renewal of registry agreements (even when significant issues of pricing, competition, and ICANN processes issues are raised), Namecheap is submitting this comment with the hope that ICANN *finally* incorporates public comments into the registry agreement renewal process.

2. The Amended .NET RA will allow the price of .NET domains for registrants to rise by almost eighty percent through 2029

The current version of the .NET RA has a price cap (e.g. maximum price that can be charged by the registry to registrars) of \$8.20, which will immediately be raised to \$9.92 (plus ICANN fee of \$0.75). After this initial price cap increase, the proposed amended RA allows for 10% annual increase to the price cap for the term of the agreement (which is through 2029). Depending upon the timing of price increases, if .NET domains are increased by 10% annually, it is possible that the wholesale price to registrars could be \$17.57 in 2029- which represents a 77% increase from the current wholesale price.

It is not clear how much registrars will pass these price increases along to consumers, but it is likely that most of this increase will be paid for by domain name registrants. As with the previous price increase in legacy TLDs, ICANN has not provided any public explanation why these increases are necessary, how they will benefit domain name registrants, or how these price increases could impact the overall DNS marketplace.

3. ICANN steadfastly refuses to conduct any evidence-based market analysis.

As Namecheap stated previously, when deciding to remove price caps for .ORG, .INFO, and .BIZ TLDs,⁵ ICANN tenuously relied upon a 2009 preliminary analysis from Professor Dennis W. Carlton. This “analysis” should be properly called “opinion” because it does not cite any evidence such as consumer surveys, market data, or any facts whatsoever. Additionally, the “analysis” only considered price caps for new gTLDs, and in fact referenced price caps in pre-2012 TLDs as a component of the “analysis” (e.g. the “analysis” did not factor removing price caps for legacy TLDs). The panel agreed in Namecheap’s IRP that ICANN cannot rely upon this “analysis” for the flaws and gaps identified in the decision. ICANN has failed to provide any review or analysis as part of the .NET RA amendment process.

ICANN has previously conducted marketplace studies, and it is imperative that such a substantial change to the DNS should only proceed after the completion of an independent and

⁴ <https://www.verisign.com/assets/domain-name-report-Q42022.pdf>

⁵ <https://www.icann.org/en/system/files/files/reconsideration-19-2-namecheap-final-determination-21nov19-en.pdf>

unbiased market analysis based upon evidence and community feedback (following ICANN's established multi-stakeholder model). Examples of previous ICANN market studies applicable to pricing include:

a. Latin American and Caribbean DNS Marketplace Study,⁶ which found in part that the price gap between ccTLDs and gTLDs lead to a drop in registrations in .com in the region.

b. The 2016 African Domain Name System Market Study Final Report⁷ concluded that higher prices for TLDs result in lower registration volumes. Domain name registrants would prefer to register local (e.g. ccTLD) domain names, but use gTLDs due to lower cost. It also found that ccTLDs with the lowest (non-zero) prices had increased registration volume. This analysis can support the position that an increase in .com pricing will result in lower registration volume in the region- which will only harm a lesser-developed region where ICANN supports initiatives to grow the local domain name industry.⁸

c. ICANN's Phase 2 Global Consumer Research Survey⁹ was an online survey that included (in part) trust levels for various TLDs (of which .com was the highest at 91%). This shows the value of .COM, and it would be very easy to create a similar survey to gauge consumer opinions and feedback regarding wholesale prices for .NET domains.

Additionally, ICANN's Competition, Consumer Trust, and Consumer Choice Review Team (CCT) Final Report & Recommendations¹⁰ concluded that there was not enough data available to determine the impact of pricing by registries and registrars on competition and requested ICANN to collect this data for further analysis. Without explanation, ICANN org decided there were "questions raised regarding the value of the data,"¹¹ paused the implementation of these recommendations, and has not indicated when this easily obtainable and vital data will be collected as recommended by the CCT. It is important to note that CCT is mandated by ICANN's bylaws and ICANN org must take action in response to its recommendations.

Since Namecheap last raised the CCT status in its comment to the .COM RA amendment, ICANN has made some progress regarding the collection of pricing and market data. ICANN org commissioned a study, as directed by the ICANN Board, to "identify what types of data would be relevant in examining the potential impacts on competition and, whether that data is available, and how it could be collected in order to benefit the work of future CCT Review Teams." The results of this study, including ICANN org's analysis, will be made available in Q2 of 2023¹². It is not clear why ICANN is insisting on significant price changes now for additional

⁶ <https://www.icann.org/en/system/files/files/lac-dns-marketplace-study-13mar17-en.pdf>

⁷ <https://www.icann.org/en/system/files/files/africa-dns-market-study-final-06jun17-en.pdf>

⁸ <https://www.icann.org/en/system/files/files/africa-strategy-implementation-2012-2017-03may18-en.pdf>

⁹ <https://www.icann.org/news/announcement-2-2016-06-23-en>

¹⁰ <https://www.icann.org/public-comments/cct-final-recs-2018-10-08-en>

¹¹ <https://www.icann.org/en/system/files/files/resolutions-final-cct-recs-scorecard-01mar19-en.pdf>

¹² <https://www.icann.org/en/system/files/files/specific-reviews-q1-2023-report-31mar23-en.pdf>

legacy TLDs when the analyses requested by many in the community are currently ongoing and will be available soon.

4. The size of Verisign necessitates additional scrutiny

The changes to the .NET agreement will have a much bigger impact on the Internet due to the dominance of Verisign and its operation of the .NET and .COM gTLDs. There are 350.4 million total domain names, of which 13.2 million are .NET and 160.5 million are .COM. Together this represents one-half of all domain names in the world- gTLDs and country-code top-level domains (ccTLDs). There are 217.3 million gTLDs, which means .NET and .COM represent almost 80% of all gTLDs.¹³ The dominance of Verisign in the domain name space further necessitates a detailed review, however ICANN yet again has failed to even explain why it has declined multiple requests to do so.

5. Namecheap encourages ICANN to incorporate stakeholder feedback

Namecheap notes that additional ICANN community members have submitted detailed comments including analyses regarding the proposed amended .NET RA. Namecheap supports the content of these comments, and strongly encourages ICANN to review the comments and take the requested actions before the ICANN Board approves the proposed amended RA (however if ICANN follows its process for previous RA amendments, it is very likely ICANN will disregard all of these public comments).

In particular, Namecheap would like to highlight the following public comments for ICANN's review, consideration, and incorporation into any final RA for .NET:

- TurnCommerce¹⁴
- Internet Commerce Association¹⁵
- Registrar Stakeholder Group (RrSG)¹⁶
- Michael Palage¹⁷

¹³ All domain name totals are as of Q4 2022 <https://www.verisign.com/assets/domain-name-report-Q42022.pdf>

¹⁴ <https://www.icann.org/en/public-comment/proceeding/proposed-renewal-of-the-registry-agreement-for-net-13-04-2023/submissions/reberry-jeffrey-19-05-2023>

¹⁵ <https://www.icann.org/en/public-comment/proceeding/proposed-renewal-of-the-registry-agreement-for-net-13-04-2023/submissions/internet-commerce-association-23-05-2023>

¹⁶ <https://www.icann.org/en/public-comment/proceeding/proposed-renewal-of-the-registry-agreement-for-net-13-04-2023/submissions/rrsg-25-05-2023>

¹⁷ <https://www.icann.org/en/public-comment/proceeding/proposed-renewal-of-the-registry-agreement-for-net-13-04-2023/submissions/palage-michael-25-05-2023>

Conclusion

Thank you for your time and consideration, and Namecheap looks forward to ICANN making this public comment process meaningful by actually incorporating this and other community feedback into the final version of the Amended RA- even if it differs from the opinion of ICANN staff or Verisign. Domain name registrants are the stakeholders that need protection during this amendment process.

Sincerely,

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Namecheap, Inc.