



Proposed Settlement

Prepared for ICANN Public Forum

Vancouver

2 December 2005



ICANN Intentions Regarding the Proposed Settlement

- The proposed settlement, when originally posted, was “proposed” and not “settled” in order to provide an opportunity for feedback
- ICANN came to Vancouver not to act on the proposed settlement, but to be in “listening mode” this week, to:
 - Provide an opportunity for all constituencies to provide concise actionable comments directly with the Board and staff
 - Feedback to the community what has been heard in order to ensure the issues have been captured
 - Take the time to synthesize this information with other community inputs and make appropriate decisions
- Therefore, no decision was to be taken concerning the proposed settlement at this meeting

Consultations/Communications Prior to this Meeting

On 24 October 2005 – ICANN posted the proposed VeriSign settlement documents and opened public forum (and have subsequently gleaned comments from that forum for this report)

Letters to Chairs of SOs and other groups. Actions by Board liaisons.

Consultations that followed:

- gTLD Registrars: conference calls (24 Oct & 27 Oct)
 - Many individual consultations
- gTLD Registries through individual communications
- ccNSO Chair and certain members, individually
- GNSO Constituency Chairs individually
- NRO/ASO members individually
- Some GAC members individually
- All constituencies and committees were asked for comments and invited to meet with the Board

Consultations in Vancouver

- Proposed VeriSign Settlement Workshop – ALAC, Business Constituency, Internet Service Providers, Registrars w/ staff and some members of the Board
- Intellectual Property Constituency consultation w/ Board
- Non-Commercial constituency w/ Board
- ccNSO consultation w/ Vint, myself
- Cross Constituency consultation (briefly on this issue) w/ Board
- Registry Constituency consultation w/ Board
- Registrar Constituency consultation w/ Board
- ALAC consultation w/ Board

Discussion of Community Feedback

- In this public review process, ICANN has solicited concise, actionable comments
- Some of those comments are still being received and public comment will continue
- ICANN Board and staff are listening carefully and considering these comments
- We have received and synthesized considerable input prior to and during the Vancouver meeting; this compilation captures much, but perhaps not all, of the commentary and represents a general summary of what has been heard to date. The order of the comments presented below is no indication of any opinion of relative importance
- There is a diversity of views on these issues, broader agreement on some issues than on others
- There are counter-points to several of these concerns.

Summary of Communicated Perceived Benefits of the Proposed Settlement

- End to litigation will provide increased stability to the ICANN environment and eliminate a drain on resources that can be better used elsewhere
- The binding arbitration provision reduces chances of future costly litigation
- Additional resources provided to ICANN in the agreement can be utilized to improve contractual compliance efforts and other important purposes as determined by the community
- Root Server Management Transition Agreement has positive aspects (but additional oversight may be required)
- Presumptive renewal has positive aspects that lend themselves to stability
- The manner in which new registry services are considered will improve transparency, predictability and timeliness

Summary of Communicated Concerns: Domain Name Price

- Increases in price should be cost justified, especially given the .COM market share
 - A “discovery” of costs is needed
 - An independent economist should study this market and the effects of VeriSign market share and potential price changes
- The increased price will be passed on to consumers, while the effect to individual domain name holders may be same, the “small bits” amount to a significant amount of funds to be received from users as a whole that goes to two parties
- Settlement pushes cost to third parties: registrars, resellers, end users. Due to competitive aspects of the marketplace, registrars will bear costs out of dwindling margins

Summary of Communicated Concerns: ICANN Fees and Resources

- This settlement results in a large increase in revenue for ICANN concentrated in one source, VeriSign:
 - Not a good business model
 - Endangering ICANN independence
- ICANN fees are passed directly on to registrars who, due to competitive aspects of the marketplace, will bear the costs out of dwindling margins while VeriSign will not pay anything for the license to operate the registry
- If ICANN receives significantly more revenue, it must significantly improve transparency of budget and reporting processes
- ICANN funding is a policy decision and should not be set through bi-lateral negotiation
- The agreement essentially eliminates the check & balance against ICANN revenue increases provided by the present gTLD registrar fee approval mechanism

Summary of Communicated Concerns: Policy Development Processes

- There are differences between the results of the GNSO PDP for consideration of new Registry Services and the proposed contract provision for the same, i.e., the “Funnel”
- The proposed contract provides that the “Funnel” cannot be altered for three years, as a result the process for .COM would be:
 - Different from other registry contracts, existing and proposed
 - Susceptible to abuse by VeriSign if the process is determined to be flawed after an initial period of use
- The provision for the use of traffic data bypasses the “Funnel”, allowing VeriSign to offer the sale of this information (a commercial asset) without review by ICANN

Summary of Communicated Concerns: Policy Development Processes

- Other aspects of the agreement should be the product of a policy development rather than a bilateral negotiation
 - Presumptive renewal
 - Pricing and ICANN fees
 - The use of traffic data

Summary of Communicated Concerns: Presumptive Right of Renewal

- The presumptive right of renewal grants VeriSign the .COM registry in perpetuity, precluding the existence of “real competition” in this sector of the DNS for a long time
- This right, existing in the prior contract did not need to be carried over into the new proposed agreement
- The factors listed by which ICANN can either terminate the proposed agreement or re-bid the agreement at its conclusion have been weakened in comparison to the last agreement

Summary of Communicated Other Concerns

- Technical coordination of the DNS is a public trust; ICANN is the trustee, VeriSign is a contractor. It is ICANN's duty to operate the trust for the public good, in this case:
 - Protecting the market from unjustified price increases that work to the detriment of everyone except VeriSign
 - Promoting competition by working to reduce prices and eliminating presumptive renewal clauses
- The existing agreement provides that:
 - VeriSign provide a proposal for ICANN consideration not earlier than 2 years prior to the expiration of the agreement (November 2005)
 - ICANN take up to six months, with the community, to review the proposal
 - The resulting agreement should be substantially the same as existing registry agreements
- The proposed agreement no longer contains a provision that VeriSign invest \$200MM in R&D and infrastructure, and there has been no report on spending to date indicating that this earlier requirement has been satisfied

Summary of Communicated Other Concerns

- The process and timing going forward for consideration of this proposal has not be defined
- This process to date has confused settlement activities with the contract renewal / renegotiation process: they should be held separate
- The agreement creates the existence of “special funds” from a portion of the increased revenue that may allow ICANN to spend without appropriate community review

Summary of Communicated Questions

- How does the settlement promote ICANN core values?
- Should ICANN be in the business of setting price controls or should the marketplace play a greater role in setting prices through registry and registrar competition for customers?
- Should ICANN force VeriSign and all other registry operators to meet specific levels of capital investment (and if so, what level)?

Concluding Remarks

- There is an open microphone session following immediately – I encourage you to speak if there are any omissions or disagree with what has been captured
- ICANN Board will carefully examine and weigh the points raised here prior to making any decision