29 June 2017

Mr. Patrick Kane
VeriSign Inc.
12061 Bluemont Way
Reston, VA 20190

Dear Mr. Kane:

This letter is in response to your request dated 20 June 2017 (attached as Appendix-1) to extend the 1 August 2017 implementation deadline related to the Thick Whois Consensus Policy requirement to accept live Thick Whois data pending final review and approval of certain updates to the .com and .net registry-registrar agreements.

After consideration of the submission, and contingent unpon continued availability of Operational Testing & Evaluation (OT&E) environment for registrars to test the migration of Thick WHOIS data to Verisign, ICANN acknowledges and agrees to extend the 1 August 2017 implementation date to 29 November 2017.

Sincerely,

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Akram Atallah
President, Global Domains Division

APPENDIX-1

June 20, 2017

VIA EMAIL

Akram Atallah
President, Global Domains Division
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Dear Akram:

The Thick Whois Consensus Policy establishes a deadline of August 1, 2017 for Verisign to begin accepting thick whois data from registrars and for registrars to begin the "migration" process of transferring thick whois data to Verisign for existing .com and .net domain name registrations. Verisign has completed all the technical and operational steps necessary to meet the August 1 deadline to start the migration period for existing .com and .net domain name registrations. On May 1, 2017, Verisign completed the deployment of an OT&E environment for registrars to test the migration of thick whois data to Verisign and we recently completed the deployment of the code in our production environment as well and stand ready to activate this code. Since the May 1 testing phase began, thirty-three registrars have made over 70,000 sample thick whois transactions in the OT&E environment.

However, for live thick whois data to be transferred and displayed in a legally compliant manner, certain changes to the .com and .net registry-registrar agreements ("RRAs") are required. We proposed these changes to ICANN on February 27, 2017. The Registrar Stakeholder Group has raised concerns with certain elements of the RRA changes. We have attempted to address these concerns in multiple telephonic discussions and with our letter dated June 9, 2017 (see attached). To date, the RRA changes needed to accept thick whois data have not been approved.

Furthermore, under our .net and .com registry agreements, we must provide registrars with a thirty day period in order for changes to the RRAs to become effective. Given this 30-day requirement, we would need to provide the updated RRAs to our registrars on or before June 30, 2017 to meet the August 1 date. Because the RRA changes remain under discussion and have not yet been approved, and because approval will not occur before June 30, our current RRA does not allow us to accept live thick whois data on August 1, 2017 as currently required by the Consensus Policy.

As a result, we request that ICANN provide an extension of the August 1, 2017 date of no less than 120 days. During this extension period, our test environment will remain available and we will continue to engage with ICANN and the Registrar Stakeholder Group regarding the RRA changes, and the steps needed to make those changes effective. Please note at this time we have not identified a need for an extension of either the May 1, 2018 thick whois deadline for all new .com and .net registrations or the February 1, 2019 deadline for the completion of the thick whois transition.

Thank you for your consideration of this important matter. We trust that the parties involved will work towards promptly resolving the concerns which have been raised regarding the implementation of thick whois in .com and .net.

Sincerely,

Patrick S. Kane

CC: Karla Hakasson, ICANN
       Cyrus Namazi, ICANN

Encl.

June 9, 2017

<u>VIA EMAIL</u>

Graeme Bunton
Chair
Registrar Stakeholder Group

Dear Graeme,

Verisign is writing this letter in response to the Registrar Stakeholder Group (RrSG) letter (the "RrSG Letter")[1] regarding Verisign's proposed amendments to the .com and .net RRAs (the "RRA Amendments") and is designed to memorialize several of the topics discussed during the conference call held between Verisign and the RrSG on May 25, 2017. The RrSG Letter, which is attached for reference purposes as Appendix 1, raises five issues, each of which is discussed below.

<u>Discussion</u>

<u>Issue #1</u>: The RrSG Letter notes that "[f]or the contract and discussion, the RrSG thinks it is imperative that [the] involved parties agree with the following as outlined by the GDPR": (1) registrars qualify as processors of personal data; (2) that Verisign qualifies as the "recipient" of personal data; and (3) that ICANN qualifies as the "controller" of personal data.

<u>Issue #1 Response</u>: This is a broader ICANN policy issue and is clearly not a request that is directed towards any proposed language in the RRA Amendments. The regulatory classification of entities within the ICANN community is a broader issue that will ultimately be determined as a matter of law by the relevant data protection authorities. The designation of ICANN as a "data controller" under the GDPR is therefore outside of Verisign's (and the RrSG's) control, and as ICANN is not a party to the .com and .net RRAs, any designation of ICANN as a "data controller" in the RRAs would be of no force and effect.

<u>Issue #2</u>: The RrSG Letter references Section 2.8.1(b)(i) of the RRA Amendments and indicates that "this clause should refer to 'necessary international transfers'." Section 2.8.1(b)(i) states in relevant part that "Registrar: (i) shall ensure that each Registered Name Holder has freely given their informed and valid consent to: (1) the sharing and, where applicable, international transfer of, their Shared Personal Data to Verisign[.]"

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[1] Verisign received the RrSG Letter on May 8, 2017.

Issue #2 Response: Based on the May 25th discussion with the RrSG, Verisign understands that the RrSG's request to add the word "necessary" in Section 2.8.1(b)(i) is designed to address a broader ICANN policy issue, as the request is based on the RrSG's desire to clarify that such international data transfers are "necessary" to meet ICANN's thick whois requirements and therefore identify ICANN as a data controller under the GDPR. As previously discussed, the designation of ICANN as a "data controller" in the RRAs would be of no force and effect and is outside of the control of Verisign or the RrSG.

That being said, the insertion of the word "necessary" or other language clarifying that the transfer is "necessary to comply with ICANN requirements" creates significant ambiguity for both Verisign and registrars regarding when a registrant's consent should be obtained. For instance, does the availability to registrars (and registrants) of privacy and proxy services render all transfers "unnecessary" for the purposes of obtaining consent? If a registrar provides billing contact information (an optional thick whois field) is such a transfer "necessary" for the purposes of obtaining consent? The proposed addition is also unnecessary because Section 2.8.1(b)(i) does not require the transfer of Personal Data to Verisign, nor does any other provision of the RRA Amendments. By its terms, Section 2.8.1(b)(i) applies solely to "Shared Personal Data" which is defined as "all Personal Data provided to Verisign by Registrar pursuant to this Agreement." If a registrant is unable or unwilling to freely provide their informed and valid consent to the registrar for the transfer of Personal Data to Verisign, then such data transfer should not occur. To the extent that Personal Data *is* provided to Verisign, however, the transfer of such "Shared Personal Data" needs to be supported with valid registrant consent, the mechanism currently used throughout the ICANN community to legitimize such data transfers.

Issue #3: The RrSG Letter refers to Section 2.8.1(b)(ii) of the RRA Amendments and states that "[t][he notice detailing the purpose can be provided by Verisign to Registrar but it must be before the registration and renewal, and it should come from ICANN, who as the controller defines such purposes." Section 2.8.1(b)(ii) does not refer to any notice, but based on the May 25th discussion with the RrSG, Verisign understands this comment to be a reference to the notice obligation set forth in Section 2.8.1(a)(i) of the RRA Amendments, which states:

> "Verisign shall notify Registrar of the purposes for which Personal Data
> submitted to Verisign by Registrar is collected, the intended recipients (or
> categories of recipients) of such Personal Data, and the mechanism for access to
> and correction of such Personal Data;"

Issue #3 Response: Section 2.8.1(a)(i) is an existing provision in the current .com and .net RRAs that Verisign has not proposed to change. The provision of such a notice is required by Section 3.1(c)(ii) of the .com and .net Registry Agreements and substantially similar provisions are contained in every ICANN Registry Agreement and in every Registry-Registrar Agreement that Verisign has reviewed. The RrSG Letter does not request that Verisign modify the language of Section 2.8.1(a)(i) and Verisign's existing practices and procedures already comply with the

request that the notice "be before the registration and renewal," as the notice is posted and available for all registrars and also formally sent to every registrar via a notice on at least an annual basis. The RrSG Letter also notes that such notice "should come from ICANN, who as the controller defines such purposes," but this request is a broader ICANN policy issue that is necessarily outside the scope of the proposed RRA Amendments.

Issue #4: The RrSG Letter states that "[g]iven the GDPR, rather than the registries trying to change all their contracts, ICANN should have a data protection policy that goes with the RAA for both registries and registrar [SIC]."

Issue #4 Response: This is not a comment directed towards any proposed modification to the .com and .net RRAs, but rather an ICANN policy issue that is more appropriately addressed in the Next Gen RDS PDP Working Group (or some other appropriate ICANN policy forum).

Issue #5: The RrSG Letter states that "the RrSG is concerned about the proposed contractual obligation regarding consent being the legal basis for data processing under the GDPR. During ICANN 58 Copenhagen the EU Data commissioners indicated that such a basis might not exist."

Issue #5 Response: This is a broader ICANN policy issue that is more appropriately addressed in the Next Gen RDS PDP Working Group (or some other appropriate ICANN policy forum). The use of consent to establish a "lawful basis" for the processing of registrant Personal Data is used throughout the ICANN community, including by every existing "thick" Registry Operator and Registrar. Of note, the RRA Amendments do not require registrars to obtain the consent of each registrant or require registrars to share any registrant Personal Data with Verisign: the RRA Amendments rather require that any registrant Personal Data that a registrar chooses to provide to Verisign be supported with freely given, informed and valid consent.

Sincerely,

Patrick S. Kane
Senior Vice President,
Naming & Directory Services
VeriSign, Inc.

CC: Karla Hakansson, ICANN
           Jen Gore, ICANN

Encl.

Appendix 1

The RrSG has discussed the proposed contractual changes by Registry operator Verisign.

The RrSG would like to focus on several topics and discuss these further with ICANN and Verisign. If these topics can be resolved, then other items currently not mentioned might be resolved internally by the RrSG.

For the contract and discussion, the RrSG thinks it is imperative that involved parties agree with the following as outlined by the GDPR.

Registrars qualify as the processor of personal data, Verisign qualifies as the recipient of personal data.

ICANN qualifies as the controller of personal data.

Specific Discussion topics.

2.8.1 (b) (i) This clause should refer to "necessary international transfers."

2.8.1 (b) (ii) The notice detailing the purpose can be provided by Verisign to Registrar but it must be before the registration and renewal, and it should come from ICANN, who as controller defines such purposes.

Additional discussion points.

Given the GDPR, rather than the registries trying to change all their contracts, ICANN should have a data protection policy that goes with the RAA for both registries and registrar.

Concern

The RrSG is concerned about the proposed contractual obligations regarding consent being the legal basis for data processing under the GDPR.

During ICANN 58 Copenhagen the EU Data commissioners indicated that such a basis might not exist.