



October 18, 2018

**Via Email: iipp2018@ntia.doc.gov, and
dredl@ntia.doc.gov
and via Courier**

Honorable David J. Redl
Assistant Secretary for Communications and Information
and Administrator, National Telecommunications
and Information Administration
U.S. Department of Commerce
1404 Constitution Avenue NW
Washington, DC 20230
USA

Dear Mr. Redl:

Re: Expiry of NTIA-Verisign Cooperative Agreement

As you know, Amendment 32 to the Cooperative Agreement between the Department of Commerce and Verisign is set to expire on November 30, 2018, unless the Department of Commerce in its sole discretion, extends the term.

The Cooperative Agreement was put in force for very good reason; to prevent Verisign from abusing its position as the sole registry for 134 million .com domains, by unjustifiably raising prices on millions of American individuals and small businesses that rely on .com domains for their Internet activities. If NTIA were to permit the Cooperative Agreement to expire, NTIA would be singularly responsible for an anticipated billion-dollar “tax like” burden, placed on American consumers and business over the next several years.

ICANN has consistently asserted that it is not a government regulator and it is readily apparent that it cannot be relied upon to fill that role. To the extent that ICANN has historically involved itself in pricing, it has been to increase pricing for the mutual benefit of itself and Verisign, at the expense of the American consumer. ICANN has a self-interest in higher .com prices, as it negotiates a percentage of all .com sales for itself. Accordingly, there is every reason to be concerned that the instant the Department takes its eye off this matter and allows the Cooperative

Agreement to lapse, that Verisign would obtain ICANN's agreement to an increase in prices in exchange for giving ICANN a "piece of the action" in the form of higher fees for ICANN.

The 2006 contract between ICANN and Verisign gave Verisign the right to increase .com prices by 7% in 4 out of the 6 years. It agreed to a similar deal with ICANN in 2012, yet the U.S. Government determined that the price increases were unwarranted and unjustified. There was also apparently concern on the part of the Department of Justice that Verisign's pricing power was not constrained by a competitive marketplace. The result was the Cooperative Agreement which fixed the wholesale price of .com domain names at \$7.85 per year.

Although six years have passed, the same concerns present themselves today. Hardware prices have fallen. The number of .com registered domains has grown, meaning the fixed cost allocated to each domain has fallen. As a company with monopoly pricing power in a falling cost environment, Verisign cannot justify a price increase. It is therefore crucial that the Department of Commerce continue to take its mandate and regulatory role seriously and extend the Cooperative Agreement in order to avoid a repeat of the same kind of unwarranted price increases that were arranged by ICANN and Verisign before the Department stepped in.

Verisign is a public company with a market capitalization of nearly \$18 billion. It earned net income in 2017 of US \$457 million on revenue of \$1.14 billion, for a remarkable operating margin of over 60%. Much of these windfall profits go towards buying back its own stock. A substantial portion goes towards excessive compensation for its top executives. Verisign paid its top four executives a total of \$18 million in compensation in 2017, which represents an unusually high 7% of its total operating expenses, not including cost of revenue. By comparison, Oracle and Adobe, not known for their stingy compensation levels, paid their four top executives the equivalent of 1% of operating expenses.

As the exclusive supplier of .com domain names to the exclusion of all others by virtue of its no-bid contract with ICANN, is able to charge \$7.85 for a .com domain name, when by many estimates the per domain cost is far less than \$3, and other eminent companies have indicated their ability, if given the opportunity, to run the registry at far lower cost. Any increase in prices would make more extreme the windfall profits that Verisign extracts from individuals and businesses wishing to participate in the Internet economy.

.Com domains play a unique role in the market, especially for Americans, where ".com" is synonymous with the Internet for the average consumer. Any business using an extension other than .com is at a distinct disadvantage, for their online brand will be non-intuitive and harder to remember. As well-known venture capitalist Paul Graham put it, not owning your .com "signals weakness.... a marginal domain suggests you're a marginal company". The value of .com domains in the secondary market is over 10x higher than the comparable domain in any other extension. This price differential would not exist if .com faced meaningful competition from the other available domain extensions. The market has determined that .com is a unique product. Verisign, as the sole supplier of this essential brand identifier on the Internet, is a monopoly-like supplier. It is therefore crucial that the Department of Commerce continue to look out for the interests of American small businesses and consumers in order to prevent predatory pricing by a monopoly supplier.

The Internet Commerce Association has created a website at <http://stopthepriceincreaseof.com/>, to increase public awareness about this issue. Further supporting background information is available there. We also recently launched a Change.org Petition to request NTIA act to stop the .com price increase located online at <https://www.change.org/p/david-redl-stop-verisign-from-raising-com-pricing>. In just a few weeks it has received support from over 1,500 concerned Internet business and individuals.

We would like the opportunity to discuss the Petition and our concerns with you in person in Washington or at the upcoming ICANN meeting in Barcelona. We look forward to hearing from you shortly in that regard. We are also enclosing our letter to the NTIA from 2012, which sets out some important background and facts pertaining to this matter.

Yours truly,
INTERNET COMMERCE ASSOCIATION



Per:
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General Counsel, ICA

Encl.

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November 26, 2012

By E-Mail

Honorable Lawrence E. Strickling

Assistant Secretary for Communications and Information &

Administrator, National Telecommunications and Information Administration (NTIA)

U.S. Department of Commerce

Herbert C. Hoover Building (HCHB)

1401 Constitution Avenue, N.W.

Washington, D.C. 20230

Re: Department of Commerce Review of the .Com Registry Operations Contract

Dear Secretary Strickling:

I am writing on behalf of the members of the Internet Commerce Association (ICA). ICA is a not-for-profit trade association representing the domain name industry, including domain registrants, domain marketplaces, and direct search providers. Its membership is composed of domain name registrants who invest in domain names (DNs) and develop the associated websites, as well as the companies that serve them. Professional domain name registrants are a major source of the fees that support registrars, registries, and ICANN itself. ICA members own and operate approximately ten percent of all existing

Internet domains on behalf of their own domain portfolios as well as those of thousands of customers.

DOC Should Approve the Pending .Com Registry Contract Only if Wholesale Prices Are Reduced and Future Increases are Limited to CPI Adjustments Unless Otherwise Justified

This letter is prompted by VeriSign's announcement of October 25, 2012:

*Verisign's .com Registry Agreement renewal with Internet Corporation for Assigned Names and Numbers (ICANN) to serve as the authoritative registry operator for the .com registry was approved by Verisign's Board of Directors on June 16, 2012, and ICANN's Board of Directors on June 23, 2012. In accordance with the Cooperative Agreement between the Department of Commerce and Verisign, Verisign submitted the .com Registry Agreement to the Commerce Department for its review on June 26, 2012. **As a result of communications beginning in October 2012 with the Commerce Department, we have concluded that the Commerce Department may not complete its review and approve the renewal of the .com Registry Agreement prior to its expiration on Nov. 30, 2012, and that the Commerce Department, together with the Department of Justice, is reviewing the .com Registry Agreement's pricing terms.** Pursuant to the terms of the Cooperative Agreement, if the .com Registry Agreement is not approved by the Commerce Department prior to its expiration, the Commerce Department is required to agree to the extension of the .com Registry Agreement for six months, or such other reasonable period of time as the Commerce Department and Verisign may mutually agree. ¹(Emphasis added)*

As the Department of Commerce (DOC) continues its review of the .com Registry Agreement in consultation with the Department of Justice, it is the view of the ICA that approval of its renewal with VeriSign should be approved as being in the public interest only if:

- The wholesale base price for .com domains is reduced from its present level of \$7.85 to at least the same \$5.86 price currently in effect for .net domains
- Future increases in the wholesale price of .com domains are limited during the six-year term of the new agreement to the increase in the Consumer Price Index (CPI) unless VeriSign submits additional information that provides sufficient documented justification to the satisfaction DOC that such higher pricing is required for the continued operation of the .com registry in a safe, stable, and secure manner.

¹ <https://investor.verisign.com/releasedetail.cfm?ReleaseID=716434>

VeriSign Continues to Dominate the gTLD Marketplace

VeriSign continues to exercise quasi-monopolistic control over the marketplace for generic top level domains (gTLDs) through its operation of the .com and .net registries under contracts with the Internet Corporation for Assigned Names and Numbers (ICANN) that require approval of the Department of Commerce. As of June 30, 2012 total combined .com and .net domain registrations totaled 118.5 million domains, of which 103.7 million were in .com and 14.8 million in .net. Combined new .com and .net domain registrations totaled 8.4 million in the second quarter of 2012 alone, and the renewal rate for these two dominant gTLDs continues at a high level, with nearly three-quarters of all domains (72.9 percent) renewing when their current registration expires.

These two dominant gTLD registries, both operated by VeriSign, constituted nearly fifty percent of the 240 million domains registered as of that date. Their combined total of 118.5 million domains exceeds the 100.3 million total for all of the country code top level domains (ccTLDs) operated by all the nations of the world. It is also more than five times greater than combined total registrations of approximately 22 million for all other existing gTLDs.²

VeriSign's dominance of the gTLD marketplace – and, in fact, of the entire global domain marketplace – is demonstrated by the combined total of .com and .net registrations, and is enhanced by the secondary market valuation placed on .com and .net domains. In particular, .com domains tend to be valued most highly in secondary market domain sales and are sought after by registrants because of the strong association among the general public of .com with the Internet itself, resulting in both enhanced type-in traffic and memorable domain addresses that establish business credibility. It is important to note that the gTLD dominance of .Com in particular is not due to any promotional activities or operational superiority on the part of VeriSign, but is almost solely due to the historic legacy of this gTLD dating back to the opening of the Internet to public and commercial use. As one secondary domain market website aptly states, “*The term "dot com" is now the world's biggest brand and it is used and respected globally as the gold standard of the internet.*”³

The monopolistic position occupied by VeriSign is openly recognized by market analysts. Here is how one technology sector analyst characterized the benefits of VeriSign's monopoly DNS position in late 2009, while also correctly forecasting the massive “special dividends” and stock buyback program that we discuss later in this letter:

² See http://www.verisigninc.com/en_US/news-events/press-room/articles/index.xhtml?artLink=aHR0cDovL2ZlZWRzLm13bmV3c3Jvb20uY29tL2FydGlibGUvcnNzP2lkPTE2NDAxMTU%3D and <http://www.verisigninc.com/assets/domain-name-brief-oct2012.pdf>

³ <http://www.dotcomagency.com/>

*We are attracted to VRSN primarily for stock-specific reasons. **VRSN holds a legal monopoly on the DNS industry...We touched on VRSN's monopoly position in DNS... As a result, VRSN holds one of the stronger competitive positions of any stock in our portfolio.** The DNS contracts for managing the dot.com and dot.net domain naming registries were granted by ICANN in 2006 and 2005, respectively. The agreements expire in 2012 and 2011, respectively, but call for a "presumptive right of renewal," i.e., the contracts should automatically renew with similar terms for another six years as long as VRSN meets its contractual obligations. Under the contracts, VRSN is allowed to take price increases of up to 7% and 10% (for dot.com and dot.net, respectively) in as many as four of the six years in the term...**VRSN has spent more than \$100mm over the past couple of years to build out its DNS infrastructure. With this spending program mostly finished, management is free to redeploy this cash flow into more shareholder friendly initiatives, like a large share buyback or perhaps the initiation of a dividend.***⁴

Absent existing pricing restraints in the .com and .net registry agreements, VeriSign could exploit this market dominance through substantially higher wholesale pricing. We believe that VeriSign should be fairly compensated for the technical function of operating these registries, but should not be allowed to abuse its quasi-monopolistic control to overcharge for those services based upon the secondary market value of the domains and the enterprise value of the businesses that have utilized them as a virtual foundation for speech and commerce.

.Net Pricing is the Appropriate Benchmark for .Com

The current .Com registry agreement was forged as the settlement of litigation brought against ICANN by VeriSign in the middle of the last decade, after ICANN attempted to put the renewal contract out for competitive rebid. One year earlier, a similar competitive rebid process had reduced the wholesale price for .net registrations from \$6.00 to \$3.50 – yet the .Com settlement set a wholesale domain base price for the much larger registry at \$6.00.

When the terms of the settlement were announced they set off substantial opposition from a bipartisan group of members of the U.S. Senate and House. They also generated intense debate and division among members of ICANN's Board and after the Board's split 9-5 February 2006 vote to approve the contract its approval by DOC was opposed by almost all major domain registrars and other members of the ICANN community. One contemporary press release captures the outcry over the badly flawed contract now being considered for renewal:

GoDaddy.com, the No. 1 registrar of domain names worldwide, is outraged by the Internet Corporation for Assigned Names and Numbers' (ICANN) 9-5 vote last

⁴ <http://seekingalpha.com/article/180092-verisign-is-brian-katz-s-highest-conviction-holding-here-s-why>

night to approve a new .COM registry agreement with VeriSign. The agreement grants VeriSign uncontested price increases and perpetual monopoly power, which will lead to exorbitant profits at the expense of the Internet community.

ICANN, the governing body of the Internet, has been working to settle a lawsuit with VeriSign, which manages .COM and .NET domain name extensions. The proposed settlement agreement would allow VeriSign to raise registration fees by seven percent annually in four of the next six years without cost-based justification. It also would give VeriSign control of the .COM registry indefinitely, as it extends VeriSign's "presumptive renewal" right when the proposed settlement agreement expires in 2012.

"We are bitterly disappointed, but we're not giving up yet. It's simply a bad deal for the industry and registrants everywhere," said Bob Parsons, CEO and Founder of GoDaddy.com. "The fact that this monopolistic deal was approved is a loud signal that major changes are needed at ICANN."

GoDaddy.com joined other top registrars, representing approximately 57 percent of all registered .COM names, in petitioning ICANN to address concerns with the proposed settlement. The ICANN board vote came only one week after the close of the public comment period, and without modifications to any of the raised issues.⁵

The principal objections to what was broadly viewed as a "sweetheart deal" were:

- ICANN's lack of adequate transparency and accountability in reaching this agreement behind closed doors and its presentation to the community as for all practical purposes a fait accompli.
- The presumptive renewal provisions of the agreement, which in fact amount to perpetual renewal and effectively grant VeriSign an endless monopoly to operate the .Com registry.
- The pricing provisions, which permit increases of 7 percent in four out of the six years of the contract absent any substantive justification.

In the ensuing years, VeriSign has exercised all four of its upward pricing options, resulting in an increase from the \$6 contract base price to the current \$7.85 wholesale price. VeriSign can likewise be expected to exercise all of the price increase opportunities permitted under the pending Agreement.

We believe that a minimum \$2 reduction, which would align .Com and .Net wholesale pricing, would be in the public interest and therefore should be required as a condition of DOC approval. As noted above, a competitive rebid of the .Net contract in the year preceding the .Com litigation settlement set a wholesale base price of \$3.50 for that .net contract. That is the only market testing that has been performed in

⁵ <http://www.prnewswire.com/news-releases/godaddycomr-outraged-over-icannr-giving-verisignr-monopoly-55213652.html>

the past decade for the operation of these two dominant gTLD registries and thus the only reliable wholesale pricing benchmark.

Rather than being viewed as harsh treatment of VeriSign, a reduction in .Com pricing of only \$2 is in fact generous. First, had the .Com contract been competitively rebid in the year following the .Net pricing competition there is a substantial probability that the base wholesale price would have been set at less than \$3.50, not at the settlement benchmark of \$6, due to the fact that the number of registered domains is more than seven times larger with resulting efficiencies of scale. Second, under its own overly generous contract pricing provisions, .Net wholesale prices were permitted to increase by up to ten percent annually absent any justification commencing on January 1, 2007, and that pricing power carried into the new .Net agreement approved by ICANN in 2011⁶ -- so the current \$5.86 .Net wholesale price may itself be unjustifiably generous.

Indeed, registry operation services consist of commodity technical services that are widely available from a large number of well-qualified potential providers⁷ It is widely acknowledged that the price of commodity technical services tends to fall, not rise, over time – particularly in the database management field, given that prices for data storage continue to decrease dramatically in accordance with Moore’s Law – so there is no reason for the DOC to permit unjustified price hikes for such services.

It is absolutely not in the public interest for .Com wholesale prices to be at least \$2 more than they would be if the .Com registry contract was competitively rebid on a regular basis. That excess price level, multiplied across a .Com domain base of at least 100 million, results in excess and unjustifiable revenues of more than \$200 million per annum. Across the entire six-year span of the renewal contract, this will result in excess revenues to VeriSign totaling at least \$1.2 billion.

Of course, for the average registrant holding only one or a few registrations for business or personal use, the difference in pricing may appear negligible. But for the overall public the aggregate difference is quite substantial. And there are distinct segments of the public who suffer a disproportionate impact from an unjustifiably high .com price. One of those segments is, admittedly, the non-infringing domain investor and developer portfolio owners and managers who comprise the membership of the ICA. But another large and significant segment is comprised of the large brand interests who are compelled to maintain substantial “defensive” portfolios of infringing, primarily .com domains with no intent to use them but solely to keep them out of the hands of infringing “cybersquatters”. Maintaining these mostly useless domains is a continuing annual cost drain on U.S. businesses, as such defensive portfolios probably total many tens of millions of domains in the aggregate – one leading brand protection company reported that a recent survey

⁶ See <http://www.icann.org/en/news/public-comment/net-renewal-11apr11-en.htm>

⁷ “A **domain name registry** is a database of all domain names registered in a top-level domain or second-level domain extension. A registry operator, also called a **network information center** (NIC), is the part of the [Domain Name System](#) (DNS) of the [Internet](#) that keeps the database of domain names, and generates the zone files which convert [domain names](#) to [IP addresses](#). Each NIC is an [organization](#) that manages the registration of Domain names within the [top-level domains](#) for which it is responsible, controls the policies of domain name allocation, and technically operates its top-level domain.” http://en.wikipedia.org/wiki/Domain_name_registry

“revealed that over 90% of corporate portfolios currently consist of defensive registrations”.⁸ Allowing VeriSign to price .Com domains in excess of competitive market levels leads to an unjustified transfer of wealth from the shareholders of large brand entities to those of VeriSign.

VeriSign also operates the .Name registry, and its wholesale pricing level currently is \$6.00, again indicating that wholesale .Com prices are unjustifiably high. In any event, there can be no justification for a \$2 price differential between .Net and .Com wholesale domain prices given that VeriSign performs the exact same registry functions for all these gTLDs, as well as back end services for other TLDs, at the exact same technical facilities:

Registry Services operates the authoritative directory of all .com, .net, .cc, .tv, and .name domain names and the back-end systems for all .gov, .jobs and .edu domain names...

*We are the exclusive registry of domain names within the .com, .net and .name generic top-level domains (“gTLDs”) under agreements with the Internet Corporation for Assigned Names and Numbers (“ICANN”) and the U.S. Department of Commerce (“DOC”). As a registry, we maintain the master directory of all second-level domain names in these top-level domains (e.g., johndoe.com and janedoe.net). **These top-level domains are supported by our global constellation of domain name servers. In addition, we own and maintain the shared registration system that allows all registrars to enter new second-level domain names into the master directory and to submit modifications, transfers, re-registrations and deletions for existing second-level domain names (“Shared Registration System”).***

*Separate from our agreements with ICANN, we have agreements to be the exclusive registry for the .tv and .cc country code top-level domains (“ccTLDs”) and to operate the back-end registry systems for the .gov, .jobs and .edu gTLDs. **These top-level domains are also supported by our global constellation of domain name servers and Shared Registration System. (Emphasis added)***⁹

What is the justification for .Com registry services being priced at \$7.85 when the exact same functions performed at the exact same technical facilities for .Net domains are priced at only \$5.86? We submit that there is no reasonable justification and that permitting this price differential to persist is not in the public interest.

A \$2 price wholesale reduction is also less harsh treatment than submitting the .Com registry contract for competitive rebid. We believe that DOC could justify such a rebid on the basis of VeriSign experiencing substantial security breaches in 2010 that were not

⁸ <https://www.markmonitor.com/mmblog/top-level-domain-survey-findings-not-surprising-but-still-concerning/>

⁹ VeriSign Form 10-K Annual Report filed with the Securities and Exchange Commission on February 24, 2012.

reported to senior management until more than a year later.¹⁰ We are confident that if such a bidding process was initiated that well-qualified DNS providers would be willing to operate the .Com registry at a wholesale price of \$5.86 – or less.

.Com Pricing Will Rise Inordinately and Unjustifiably if DOC Fails to Protect the Public Interest

If the DOC approves the .Com renewal contract in the form approved by ICANN's Board of Directors in June, .Com wholesale prices will rise inordinately and unjustifiably over its six year term. We must assume that VeriSign will again exercise all four upward pricing options if they are available.

This is what the compounded effect of four seven percent increases would result in starting from the current base price of \$7.85:

1. \$8.40
2. \$8.99
3. \$9.62
4. \$10.29

An ICANN fee and a registrar markup are added to these wholesale prices, resulting in a retail price that is more than \$3.00 higher than the above wholesale prices (and, depending on the registrar, in some case substantially higher). Thus, if the contract currently being reviewed by DOC is approved, retail prices for .Com domain registrations and renewals can be expected to reach \$13.50 or higher by the end of its term – and that would be the starting base price for the next perpetually renewed contract. In addition, for those remaining two years in which VeriSign is not entitled to exercise a seven percent price increase absent justification, its ICANN-approved renewal contract permits two additional price increases of up to seven percent each as follows:

In any year, however, where a price increase does not occur, Registry Operator shall be entitled to increase the Maximum price by an amount sufficient to cover any additional incremental costs incurred during the term of the Agreement due to the imposition of any new Consensus Policy or documented extraordinary expense

¹⁰ "In 2010, the Company faced several successful attacks against its corporate network in which access was gained to information on a small portion of our computers and servers...given the nature of such attacks, we cannot assure that our remedial actions will be sufficient to thwart future attacks or prevent the future loss of information. In addition, although the Company is unaware of any situation in which possibly exfiltrated information has been used, we are unable to assure that such information was not or could not be used in the future. The occurrences of the attacks were not sufficiently reported to the Company's management at the time they occurred for the purpose of assessing any disclosure requirements. Management was informed of the incident in September 2011" See footnote 5.

*resulting from an attack or threat of attack on the Security or Stability of the DNS...*¹¹

In short, even without the ability to levy unjustified price hikes, VeriSign retains the freedom to increase prices to account for the costs of implementing any new ICANN consensus policies or to deal with even the threat of cyberattacks. Any contract ultimately approved by DOC should preserve necessary pricing flexibility that can be justified for these and other salient reasons.

.Com Security and Stability Will Not Suffer if Wholesale Prices Are Reduced and Limited to CPI Increases

During the 2005-6 controversy over the .Com litigation settlement, as well as more recently, VeriSign has attempted to justify high .Com wholesale prices as being required to upgrade facilities and maintain sufficient cybersecurity. For example, a recent company press release stated:

The level of security and stability offered by Verisign is only possible with investments in overcapacity and redundancy, network security, intellectual property (IP) and in human capital: The engineers and employees at Verisign who operate the .com registry and ensure its security and stability. The pricing terms of the .com Registry Agreement enable Verisign to make these investments, develop the necessary IP, know-how and purpose-built systems, respond to new threats to stability as they emerge, and recruit and retain the specialized talent necessary to maintain our network, including dozens of globally distributed constellation sites and data centers in the U.S. and elsewhere.

*Verisign believes that under the terms of Amendment 30 the public interest is served in the security and stability of the DNS and through Verisign's operation of the .com registry. The stakeholders that rely on the availability and secure functioning of the DNS are numerous, including businesses large and small, and individual Internet users.*¹²

Although that release failed to note the 2010 security breach, we nonetheless acknowledge that sufficient investment to maintain the security and other key operational aspects of the largest and most important gTLD is of paramount importance. However, even at the reduced wholesale pricing level we have suggested, VeriSign would have ample resources to invest in these areas.

¹¹ Section 7.3 (d) of draft .com renewal summary changes, March 27, 2012, available at <http://www.icann.org/en/news/public-comment/com-renewal-27mar12-en.htm>

¹² http://www.verisigninc.com/en_US/news-events/press-room/articles/index.xhtml?artLink=aHR0cDovL2ZlZWRzLm13bmV3c3Jvb20uY29tL2FydGlibGUvcnNzP2lkPTE2NTE2Mzg

For example, VeriSign's 2012 10-K SEC filing reports:

We believe that timely development of new and enhanced Internet security, e-commerce, information, and technologies is necessary to remain competitive in the marketplace. During 2011, 2010 and 2009 our research and development expenses were \$53.3 million, \$53.7 million and \$52.4 million, respectively.

VeriSign could readily maintain this level of R&D spending even if .Com pricing was reduced by \$2.

Likewise, in regard to cybersecurity, the 2012 10-K reports:

In 2010, we announced an approximately \$300 million new initiative called "Project Apollo" to meet infrastructure challenges expected over the next decade. We expect that this initiative will strengthen, scale and in some cases revamp the .com infrastructure to absorb very large loads, repel significant DDoS attacks and provide enhanced monitoring and logging capabilities. We expect to grow capacity 1,000 times today's level of 4 trillion queries to manage 4 quadrillion queries per day to support normal and peak system load and attack volumes based on what we have experienced historically, as well as to accommodate projected Internet attack trends.

This "Project Apollo", which has been designed to meet all anticipated infrastructure challenges for the next decade, is absorbing approximately \$30 million in investment per year. Again, this level would be readily sustainable in the context of a .com price reduction.

Taken together, VeriSign's annual expenditures for R&D and the Project Apollo infrastructure and cybersecurity initiative total approximately \$83 million per year. Even at the price level we have suggested, revenues from the .Com registry alone would total in excess of \$585 million per year, more than seven times higher. And that does not even take into account the company's substantial capital base – "Verisign ended the first quarter with Cash, Cash Equivalents, Marketable Securities and Restricted Cash of \$1.39 billion".¹³ Clearly, there is no reason to believe that a .Com price reduction would present any threat to adequate funding for operational upgrades and enhanced cybersecurity.

What would be endangered by a .Com price reduction are extremely generous dividend distributions to VeriSign shareholders as well as a large share buyback program. As the company's most recent 10-K filing discloses:

In April 2011, we declared and in May 2011 paid a special dividend of \$2.75 per share of our common stock totaling \$463.5 million.

¹³ http://www.verisigninc.com/en_US/news-events/press-room/articles/index.xhtml?artLink=aHR0cDovL2ZlZWRzLm13bmV3c3Jvb20uY29tL2FydGlibGUvcnNzP2lkPTE1ODE2MTU%3D

Similarly, the 2010 10-K reports a similar act of extraordinary financial generosity to VeriSign shareholders:

In December 2010, we declared and paid a special dividend of \$3.00 per share of our common stock totaling \$518.2 million.¹⁴

Lastly, VeriSign's enviable profitability has allowed it to engage in a continuing stock buyback program resulting in increased share prices, with more than three quarters of a \$billion still in reserve for future buybacks:

During the first quarter, Verisign repurchased approximately 1.8 million shares of the company's common stock for a cost of \$68 million. At March 31, 2012, approximately \$763 million remained available and authorized under the current share repurchase program.¹⁵

In other words, over the past two years VeriSign determined that a total of \$981.7 million was not required for R&D and cybersecurity purposes and could be readily transferred to its shareholders – and still leave it with about \$1.4 billion in cash and equivalents, with about half of that reserved for future stock buybacks rather than investment in operations.

While these distributions in part represented cash received for sales of six separate and less profitable operating units over the past three years, the fact remains that VeriSign determined that retention of these funds was not required for future R&D and cybersecurity expenditures for its remaining core registry operations business. Further, those divestitures resulted in a fifty percent increase in operating margins, from a quite healthy 33% to an enviable 52%. While official 2011 earnings were \$249 million on revenues of \$772 million, earnings per share (EPS) are on track to jump 27% in 2012 alone, and VeriSign is projected to generate \$368 million in free cash in 2012 and \$409 million in 2013.¹⁶ This company would remain highly profitable even in the wake of a .Com wholesale price reduction.

Overall, the transfer of nearly \$1 billion through special dividends constitutes significant evidence that VeriSign revenues are substantially in excess of what is required for the continued secure operation of the .Com registry. Its fifty percent-plus operating margin, surging EPS, and escalating free cash generation is a direct result of having perpetual monopoly control of the most important and valuable gTLD, along with the government-sanctioned ability to repeatedly raise domain prices absent any justification.

¹⁴ Form 10-K Annual Report, filed February 24, 2011

¹⁵ See footnote 9

¹⁶ http://newsletters.barrons.com/dsa/2012/03/30/a-true-dot-com-pure-play/?mod=WSJ_qthist_wsjlatest

Only DOC Has the Power to Restrain .Com Pricing

Section 3.1 (b) (v) of the draft renewal agreement between VeriSign and ICANN states that any adopted ICANN Consensus Policies shall not:

(A) prescribe or limit the price of Registry Services; ...

*(C) modify the terms or conditions for the renewal or termination of this Agreement;
...*

(G) modify the terms of Sections 7.2 and 7.3 below

Section 5 of the Agreement requires that disputes arising under it shall be resolved by binding arbitration.

Section 6.1 of the Agreement relates to termination by ICANN, stating:

Section 6.1 Termination by ICANN. ICANN may terminate this Agreement if and only if: (i) Registry Operator fails to cure any fundamental and material breach of Registry Operator's obligations set forth in Sections 3.1(a), (b), (d) or (e); Section 5.2 or Section 7.3 within thirty calendar days after ICANN gives Registry Operator written notice of the breach, which notice shall include with specificity the details of the alleged breach; and (ii) (a) an arbitrator or court has finally determined that Registry Operator is, or was, in fundamental and material breach and failed to cure such breach within the prescribed time period and (b) following the decision of such arbitrator or court, Registry Operator has failed to comply with the decision of the arbitrator or court.¹⁷

In other words, VeriSign can fail to cure fundamental and material breaches of the Agreement for which it has received notice from ICANN, can be found to have been in fundamental and material breach by an arbitrator or court, and even after losing the judgment in such forum can retain the right to continue operating the .Com registry if it then complies with the decision of the arbitrator or court. Only a willful refusal to comply with such a decision could provide ICANN with the power to terminate the Agreement and make it available for competitive rebid, a provision which has drawn stern criticism from the Department of Justice.¹⁸

¹⁷ See draft .com agreement redline March 27, 2012; see footnote 7

¹⁸ Such perpetual renewal clauses in gTLD contracts were sternly criticized in a December 2008 letter sent from the department of Justice's Antitrust Division to the DOC: "*ICANN should require competitive bidding for renewals of a gTLD registry agreement, rather than granting the incumbent operator a perpetual right to renew without competition... We respectfully suggest that the DOC refrain from expressing satisfaction with ICANN's progress toward the goal of promoting competition among TLDs unless and until ICANN develops a credible and effective policy that compels it to employ tools such as competitive bidding to manage TLDs in a manner that safeguards the interests of registrants in obtaining high quality domains at the lowest possible prices. To date, we believe that ICANN has not come close to fulfilling its obligations to employ competitive principles in its management of TLD registry operations.*" (http://www.ntia.doc.gov/comments/2008/ICANN_081218.pdf)

And Sections 7.2 and 7.3 relate to fees paid by VeriSign to ICANN and VeriSign's pricing of domain name registrations and registry services – they too are off-limits for re-negotiation in all future .Com contracts.

These are collectively the provisions of the Agreement that prompted charges of a “sweetheart deal” in 2005-6 and that preclude ICANN from ever subjecting the Agreement to market price testing except in the extraordinary and very unlikely circumstances that would allow a termination, as well as from negotiating any changes in its domain registration pricing provisions. This is why ICA's April 26, 2012 comment letter on the proposed .Com renewal contract stated:

We lament the fact that the perpetual renewal and pricing provisions of the current .com agreement preclude ICANN from subjecting the agreement to competitive rebid and permits additional price increases without any justification or public explanation. Notwithstanding the manner in which ICANN has unwisely restricted its own bargaining latitude, we believe that a requirement should be imposed on VeriSign and all other gTLD registry operators to provide a public explanation of the justification for any future price increases, and that such a requirement would not be a material term or condition that ICANN is precluded from imposing or altering. Because of these serious contractual flaws, it is even more critical that the batching process for new gTLDs facilitate the rapid introduction of new, general purpose gTLDs that can exert pricing competition against .com and other incumbent registries.¹⁹

ICANN conceded its own impotence in this regard in the very text of the Public Notice that accompanied the draft .com renewal Agreement, noting that any breach of the renewal provisions would expose it to legal liability:

The registry agreement precludes a competitive bidding process to provide .com registry services. The renewal provisions in the current .com Registry Agreement are consistent with all the other ICANN gTLD agreements. All ICANN's gTLD registry agreements essentially provide that they will be renewed absent a serious breach of the agreement. These renewal provisions encourage long-term investment in robust TLD operations, and this has benefitted the community in the form of reliable operation of the registry infrastructure. ICANN does not have the right under the current .com Registry Agreement to unilaterally refuse to renew the agreement or to bifurcate registry functions. Breaching the renewal provision would expose ICANN to liability under the contract... Both the current .com registry agreement and the proposed renewal agreement permit Verisign to increase the price it charges registrars for domain names registrations four times during the six-year term with each increase being no greater than 7%. This provision was substantially negotiated between Verisign on the one hand, and the U.S. Department of Justice and the U.S. Department of Commerce, on the other. The current agreement (Section 4.2)

¹⁹ <http://forum.icann.org/lists/com-renewal/msg00033.html>

specifies that the pricing and renewal provisions (among others) are not subject to change through the agreement renewal process. (Emphasis added)

Given ICANN's self-imposed legal impotence, rendering it unable to negotiate any alteration in the presumptive renewal or registration pricing provisions of the proposed .Com Agreement, only the Department of Commerce – acting in concert with the Department of Justice – can protect the overall public interest by compelling .Com pricing changes as a condition for government approval.

As the DOC's own "COMMERCE, ICANN AND VERISIGN AGREEMENT IN PRINCIPLE" conspicuously notes, VeriSign's exercise of permissible price increase powers contained in the Agreement does not shield it from antitrust scrutiny, as that Agreement in Principle contains—

Recognition by VeriSign that any approval by the Department of Commerce of the new registry agreements is not intended to confer antitrust immunity on VeriSign with respect to the registry agreements.²⁰

Further, while we believe that antitrust analysis is relevant, we also feel that the operative concept of "public interest" in this situation is broader than antitrust law. Given the .Com dominance, its operation is in essence a public trust.

Finally, DOC has a particular duty to protect U.S. domain registrants because of the particular dominance of .com domains in the U.S. marketplace. Unlike the European Union, where many businesses utilize ccTLDs for their main website (e.g., .uk, .fr, .de, etc.), as well as many other nations where the same situation exists (such as .au for Australia and .cn for China) the .us ccTLD has never gained significant market share in the United States. As a result, Alexa reports that 23 of the top 25 U.S. websites, and 94 of the top 100, are hosted on .com domains.²¹

VeriSign Shareholders Will Have Ample Opportunity to Benefit and Profit from New Initiatives in Fully Competitive Markets

If DOC acts in accordance with our request it will likely have some negative short-term impact on the overall price of VeriSign stock, which at the moment undoubtedly prices in the unwarranted benefits of both perpetual renewal and guaranteed price increases notwithstanding overall consumer price levels, technology-based productivity gains, or any need for substantive justification. However, DOC should act in the public interest of resetting .Com pricing at a level more consistent with the market testing expressed in current .Net pricing.

²⁰ http://www.ntia.doc.gov/files/ntia/publications/doc_icann_verisign_agreement_05182001.pdf

²¹ <http://www.alexa.com/topsites/countries/US>

Such action would in no way preclude VeriSign and its shareholders from reaping additional profits in markets in which its .Com monopoly cannot be leveraged and it is not subject to ICANN-imposed price restrictions. The current and proposed renewal .Com contract both allow VeriSign to engage in activities that do not constitute core “Registry Services” and to charge whatever the competitive market will bear. For example, VeriSign is the exclusive registry for the .tv and .cc ccTLDs, and operates the back end registry systems for the .gov, .jobs, and .edu²² gTLDs. It also provides Network Intelligence and Availability Services (NIA) comprised of its iDefense, Managed DNS, and DDoS Protection Services, each of which generates separate fees from customers.

VeriSign also stands to generate substantial new revenues through participation in ICANN’s New gTLD program. It has applied for 14 new gTLDs, including twelve International Domain Name (IDN) transliterations of .Com and .Net, none of which will be subject to pricing restrictions. In addition, applicants for about 220 new gTLDs have selected VeriSign to provide their back-end technical registry services, which also have been negotiated at competitive market prices.

In regard to new gTLDs, we would note that additional new gTLDs established over the past decade have failed to dislodge .Com and .Net from their dominant gTLD positions, and at this point in time the competitive impact of the introduction of hundreds of new gTLDs is entirely speculative. Therefore, ICANN’s new gTLD program cannot be used as a rationale for abrogating DOC’s responsibility to safeguard the public interest through restraint of exorbitant .Com pricing as there is no assurance that any new gTLDs, either individually or in the aggregate, will effectively exercise market price competition against .Com over the term of the pending Agreement.

Overall, DOC can act to protect the public interest in reasonable .Com pricing levels while leaving VeriSign and its shareholders free to reap the financial benefit of an array of existing and new services that do not benefit from the natural monopoly conferred by the .Com and .Net registry contracts.

Conclusion

Operation of each TLD registry is a “natural monopoly” because only a single entity may exercise control over registry operations. Traditionally, the possibility of excessive price increases imposed by the entity in control of a natural monopoly has been addressed either by a regulatory regime that controls such increases (a role that ICANN abandoned in its 2005 .Com litigation settlement) or by periodic price testing in the marketplace – a possibility that is effectively precluded by the .Com agreement’s presumptive renewal provisions. Natural monopolies in the public utility sector traditionally require the monopoly operator to submit a request accompanied by extensive documentation and justification, and receive affirmative permission from its oversight regulator, before any price increase can be put into effect.

²² The .edu registry operation generates no fees to VeriSign.

The possibility of excessive price increases is even more pronounced for .Com domains, given the registry's massively dominant position in the overall TLD marketplace -- .Com registrations constitute nearly half of all domain registrations, and the secondary marketplace as well as consumer behavior conclusively demonstrates that .Com domains are by far the most valuable. A registrant which believes it has been subject to excessive price increases has no practical alternative at the present time, as moving their domain location to another TLD would mean significant sacrifices in overall traffic and marketplace recognition and credibility.

Given these realities, we implore the Department of Commerce to act to protect the public interest by mandating a reduction of wholesale .Com domain prices to at least the same level as current .Net prices, and to prohibit future .Com price increases other than adjustments in concert with CPI increases, or those for which VeriSign provides substantial and convincing justification as being necessary for the continued reliable and secure provision of .Com registry services.

We would be happy to discuss these views further with you or any other member of the NTIA staff, as well as with officials of the Antitrust Division of the Department of Justice.

Thank you for considering our views in this important matter.

Sincerely,

Philip S. Corwin

Counsel, Internet Commerce Association

Cc: Renata B. Hesse, Acting Assistant Attorney General, Antitrust Division,
Department of Justice