



Comment on Proposed Renewal of Registry Agreement for .BIZ

Status: FINAL

Version: 1.0

14-May-2019

Business Constituency Submission

GNSO//CSG//BC

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 Business Constituency 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
3. is technically stable, secure and reliable.

Comment

This document is the BC's response to the Proposed Renewal of a Registry Agreement for legacy gTLD .BIZ, which was published for public comment on 3-Apr-2019.¹

In general, the BC supports the proposed renewal agreement negotiated between ICANN and the operator of .BIZ because it incorporates 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.

Below, the BC offers specific comments on selected terms of the proposed renewal agreement.

ICANN should seek community input *before* negotiating registry agreement renewals

These proposed agreements were already negotiated and agreed by ICANN and Registry Services, LLC. At this point, ICANN seeks public comment not to renegotiate this agreement, but only to make a report of public comments "available for the ICANN Board in its consideration of the proposed renewal agreement."

However, as the BC noted in our 2016 comments on the proposed Base Registry Agreement and recent renewal agreements, we are not content to merely comment after ICANN has already negotiated and approved the changes:

Further discussions with the broader community should be conducted regarding changes to these proposed amendments before they are finalized and sent to the ICANN Board for consideration.²

The BC again asks ICANN to solicit community input before it enters negotiations with contract parties, so that ICANN understands the priority concerns of business users and registrants when it negotiates on our behalf.

¹ See ICANN public comment page for .BIZ at <https://www.icann.org/public-comments/biz-renewal-2019-04-03-en>

² See Jul-2016 BC Comment on Proposed Amendments to Base New gTLD Registry Agreement, at https://www.bizconst.org/assets/docs/positions-statements/2016/2016_07july_20%20bc%20comment%20on%20proposed%20gTLD%20base%20registry%20agreement%20final.pdf

Contractual Compliance Review

The BC appreciates that ICANN performed a review of contractual compliance by Registry Services, LLC noting that ICANN concluded the registry was “found to be in compliance with its contractual requirements for the operation” of the TLD.

That said, transparency with respect to contract compliance is a priority for the BC, and we ask ICANN to share its data on compliance reviews that were performed.

Rights Protection Mechanisms

The BC notes that the .BIZ renewal proposes Uniform Rapid Suspension (URS) as part of the new agreement. URS has the potential to give businesses a cost-effective way to stop clear and convincing incidents of trademark infringement by domain registrants, because it is faster and less expensive than the Uniform Domain Name Dispute Resolution Policy (UDRP). The benefits of URS could be significant for small businesses and individuals.

In our comments on the proposed renewals for .MOBI and .NET back in 2017, the BC said that renewing legacy gTLD operators should not be compelled to accept URS within the context of RyA renewal negotiations, because we hoped that URS would become GNSO consensus policy.³

We hope that URS will become GNSO consensus policy as an outcome of the ongoing *Review of all Rights Protection Mechanisms (RPMs) in all gTLDs PDP Working Group*. This Working Group (WG) will be reviewing the efficacy and administration of the URS later this year and is charged by its Charter with recommending whether the URS and other relevant new gTLD RPMs should become ICANN Consensus Policy and thereby applicable to legacy gTLDs.

The BC continues to believe that the Policy Development Process (PDP) is the best path for the implementation of URS, since it works across all gTLDs, instead of depending on individual contract negotiations. However, the RPM Review WG has not yet made recommendations with respect to URS as a Consensus Policy. This lack of consensus may derive from deeply-held differences among GNSO constituencies, which the BC has noted in the EPDP underway at this time.

Despite our reservations about second-guessing a PDP, the BC supports importing registrant protections from the new gTLD base agreement—including Specification 7, Specification 11, and URS -- in any contractual negotiation opportunity that arises for legacy gTLDs.

This is consistent with our long-held support for RPMs and registry accountability, and reflects our growing frustration with the GNSO Policy Development Process to advance these protections for business registrants. We welcome future implementation of consensus policy on RPMs. ICANN should not miss any opportunity to extend existing new gTLD registrant protections to legacy gTLDs, particularly to help small and medium enterprises protect their domain names and their customers.

³ See BC comment on .NET renewal, May-2017, at https://www.bizconst.org/assets/docs/positions-statements/2017/2017_05May_30%20BC%20Comment%20on%20.NET%20RyA%20renewal.pdf

Also see BC comment on MOBI renewal, Feb-2017, at http://www.bizconst.org/assets/docs/positions-statements/2017/2017_02February_01%20BC%20Comment%20on%20MOBI%20RyA%20.pdf

Most recently, the BC approved this new position regarding the priority of obtaining RPMs and registrant protections in our comments supporting the proposed registry agreements for .ORG and .INFO⁴, and also for .ASIA⁵.

Domain name registration prices

Under the renewal agreement negotiated between ICANN and the .BIZ registry, domain name wholesale prices would no longer be subject to the historical limit of 10% for annual price increases.

ICANN agreed to remove the price regulation for renewing legacy gTLDs, giving the same explanation for doing so in the ORG, INFO, and BIZ agreements:

In alignment with the base registry agreement, the price cap provisions in the current .biz agreement, which limited the price of registrations and allowable price increases for registrations, are removed from the .biz renewal agreement. Protections for existing registrants will remain in place in line with the base registry agreement. This change will not only allow the .biz renewal agreement to better conform with the base registry agreement, but also takes into consideration the maturation of the domain name market and the goal of treating the Registry Operator equitably with operators of new gTLDs and other legacy gTLDs utilizing the base registry agreement.

In our 2016 comment on Proposed Amendments to Base New gTLD Registry Agreement, the BC said, “it is not ICANN’s role to set and regulate prices”.⁶

And 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, INFO, and BIZ are adopting RPMs and other registrant provisions we favor, the BC supports broader implementation of the Base Registry Agreement, including removal of price controls. This position regarding price regulation was adopted by the BC in its Apr-2019 comment on proposed renewals of ORG and INFO.⁷

⁴ Apr-2019 BC Comment on Proposed Renewal of Registry Agreements for .INFO and .ORG, at https://www.bizconst.org/assets/docs/positions-statements/2019/2019_04April_29%20BC%20Comment%20on%20.INFO%20and%20.ORG%20Registry%20Agreements.pdf

⁵ 7-May-2019 BC Comment on Proposed Renewal of Registry Agreement for .ASIA, at https://www.bizconst.org/assets/docs/positions-statements/2019/2019_05May_07%20BC%20Comment%20on%20.ASIA%20Registry%20Agreement.pdf

⁶ See Jul-2016 BC Comment on Proposed Amendments to Base New gTLD Registry Agreement, at https://www.bizconst.org/assets/docs/positions-statements/2016/2016_07july_20%20bc%20comment%20on%20proposed%20gtld%20base%20registry%20agreement%20final.pdf

⁷ Apr-2019 BC Comment on Proposed Renewal of Registry Agreements for .INFO and .ORG, at https://www.bizconst.org/assets/docs/positions-statements/2019/2019_04April_29%20BC%20Comment%20on%20.INFO%20and%20.ORG%20Registry%20Agreements.pdf

Moreover, the new Base Registry Agreement guarantees that current registrants have the right to lock-in current domain prices for their renewals. .BIZ will be required to give 6 months of notice before increasing domain renewal prices, and must allow registrants to lock-in current prices for up to 10 years:

Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e., the price in place prior to any noticed increase) for periods of one (1) to ten (10) years at the discretion of the registrar, but no greater than ten (10) years.⁸

The ability to lock-in prior prices for 10 years is valuable to a business registrant who has invested in a domain name for branding, labeling, and marketing materials. In the longer term, business registrants seek predictability about renewal costs for their domain name(s).

We recommend that whenever price caps are removed, it is important for contracted parties to responsibly keep prices at reasonable levels, to maintain consumer trust and to ensure price predictability for their existing and prospective registrants. It would negatively affect business registrants if contracted parties were to take undue advantage of this greater flexibility by substantially increasing renewal prices for an existing registrant who has significantly committed to its domain name.

We therefore urge ICANN and contract parties to ensure domain prices are predictable and within the parameters of the renewal agreement, in order to demonstrate that the removal of price caps was a prudent policy approach.

--

This comment was drafted by Steve DelBianco, Mark Datysgeld, and Andrew Mack.

It was approved in accord with the BC charter.

⁸ Proposed registry agreement for .BIZ at Section 2.10 (b). See <https://www.icann.org/sites/default/files/tlds/biz/biz-proposed-renewal-03apr19-en.pdf>