

Statement for the Record of

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on

Contracting the Internet: Does ICANN create a barrier to small business?

Before the

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Summary:

ICANN is an over broad and overbearing regulatory body that harms every small business in the United States.

Most users of *.com* are captive customers; they can not move their internet identities or their brands to another Top Level Domain (TLD) without incurring substantial costs and loss of marketplace recognition.

ICANN's proposed contract with Verisign will cost these businesses and the community of internet users several hundred million dollars each year, in perpetuity, in excessively inflated, arbitrary domain name registry fees.

The difference between the actual cost of providing name registration services in *.com* – a few cents - and the price that ICANN requires registrars (and thus domain name consumers) to pay - \$7 – is unconscionable. It may seem like a small amount when viewed alone, but it cumulates to hundreds of millions of dollars per year in unearned and undeserved revenue for Verisign – revenue that comes directly out of the hard-won earnings of small businesses and internet users.

The damage caused by ICANN goes much deeper and is far more insidious than the ICANN-Verisign contract:

ICANN denies to entrepreneurs the right to try their ideas in the open marketplace.

ICANN injects its own ideas of economic, social, legal, and moral policy into the internet's domain

name marketplace.

ICANN provides a means through which incumbent business interests can deny entry to the marketplace to potential competitors.

ICANN has tried to justify these restraints on free and open competition through claims of technical necessity. Yet when examined, those claims are barren and devoid of any relationship to the technical operation of the internet.

Indeed, ICANN has vacated and abdicated those jobs that pertain to technical stability of the internet that it was tasked to perform when ICANN was formed. It is fortunate for the internet that others stepped in and took up the reins that ICANN dropped.

Full Statement:

Mr. Chairman and members of the Committee . Thank you for giving me the opportunity to submit this material.

Who Am I?

I am Karl Auerbach.

I served on ICANN's Board of Directors as the only publicly elected Director for North America.

I served for roughly 2 ½ years until ICANN abolished my seat and that of all other publicly elected Directors.

I am the only person from North America who will ever be elected by the public to ICANN's Board of Directors.

I have been associated with the technical development of the internet ever since its inception in the early 1970s'.

I have been a principle or early member of several internet related start-ups.

I continue today to create new internet products through my current company, InterWorking Labs.

I have several names in *.com* that I have had since before the existence of Verisign or ICANN. I have built my network identity and the brands of several of my products and companies in *.com*. It would be economic suicide to re-brand myself, my products, and my companies. I am effectively a captive customer of *.com*.

Structure of My Comments

The purpose of this hearing is to discuss the agreement between ICANN and VeriSign to maintain the infrastructure of the Internet, with particular emphasis on how that agreement affects small businesses.

Let me begin by saying that the ICANN-Verisign contract has very little to do with the infrastructure of the internet. The contract deals only with Verisign's role with regard to the operation of the .com Top Level Domain (TLD) registry.

The proposed contract has had two predecessors. These contracts form a progression in which ICANN granted ever greater rights, including a right to operate .com in perpetuity, to Verisign.

Both contracts were adopted by ICANN in clear violation of ICANN's own rules.

Because this new contract is being adopted in the context of a settlement to a lawsuit, it too is being made outside of ICANN's own rules.

There are many flaws to this proposed contract but I am going to focus on only one of them. Then I am going to step back and look at ICANN in a broader context.

The DNS Monopoly

We should begin by recognizing that ICANN is entrusted with the management of a de-facto monopoly position over the domain name marketplace.

There are other Domain Name System (DNS) roots on the internet, many of which contain a rich catalog of TLDs. Experience has demonstrated that the existence of these other roots in no way interferes with or harms the ICANN/NTIA root. However, these other root systems are not a practical alternative – the ICANN/NTIA root is so utterly dominant that for all practical purposes it is the *only* root and DNS name space on the internet.

Decisions made by ICANN, therefore, affect all internet users. Users and businesses alike are forced to accept ICANN's decisions – the only alternative is to refrain from using the internet which, as we well know, is virtually impossible in today's business world.

So one has to always ask of ICANN's decisions: *Did ICANN's decision making process fairly and equitably include the interests of those who are to bear the burden of those decisions?*

Unfortunately, in the world of ICANN the answer is usually “No”.

ICANN's Seven Percent Solution

ICANN has established a domain name business model in which domain name customers acquire names through intermediaries called *registrars*. These registrars, in turn, deal with a central *registry*, one for each TLD.

Verisign is the registry for the .com TLD.

In this arrangement the registrars are obligated by ICANN to pay to Verisign a registry fee of several dollars per name per year. The registrars, of course, pass this fee on to their customers.

Under the proposed contract that registry fee is set at \$7 plus a 7% increase applied over a multi-year schedule.

If we look at the nearly 50,000,000 names in *.com* we can easily compute that this fee cumulates to something on the order of \$350,000,000 per year, in perpetuity, flowing out of the pockets of domain name users into the bank account of Verisign.

Is there any relationship between the amount of this registry fee and the actual cost of providing the registry service?

No.

Is there any competitive pressure that might drive down this fee?

No.

In other words, ICANN has simply created a permanent conduit for Verisign to milk businesses, large and small, and all other users of the internet.

So it behooves us to try to understand what is the actual cost of those registry services.

Has ICANN every tried to ascertain those costs?

There is no evidence that it ever did.

So let us take a moment and ask, what is the actual cost of providing registry services for *.com*?

One way of estimating is to add up the costs of the systems (including staff to run those systems) that comprise the service. There are two parts: The suite of DNS servers located around the world and the set of centralized transaction processors that handle the requests from registrars.

A very liberal estimate of the cost to install and establish 35 DNS server sites, each with 8 servers, scattered around the world, is on the order of \$3.5 million (US) one-time expense plus a yearly operational cost of another \$3.5 million. But even if my estimate is in error and is 10-times too low, that total would still represent only a tiny fraction of the money that ICANN allows Verisign to charge for this service.

Another way to look at the cost is to note that Verisign's own CEO recently stated that for every paying name registration in *.com* there are nearly 200 free registrations (by registrars engaging in cost-free domain name speculation under ICANN's "add grace" policy).

That leads to a very simple calculation: Every paying registration (\$6 now, rising to \$7 under the proposed contract) is carrying nearly 200 non-paying registrations. If we assume that Verisign is operating with zero profit margin then that \$6 (soon \$7) fee must cover the cost of about 201 name registrations. Simple division (\$6.00 divided by 201) tells us that the actual cost of a name registration transaction is something less than \$0.03.

Three cents cost for a product that is sold for \$6 (soon \$7) is a mighty fine business proposition for Verisign. It aggregates to a multi-hundred-million dollar shafting of the community of internet users thanks to ICANN's largess towards Verisign.

Such is the faux kind of “competition” that ICANN has brought to the domain name registry industry.

Small businesses and internet users have no choice but to pay for these exorbitantly overpriced services. And ICANN's structure is such that small business and entrepreneurs really have no say in how ICANN's decisions are made.

In essence ICANN, through Verisign, is imposing a very heavy tax on businesses and individuals who use domain names. And those who are bearing the burdens of this tax have no real representation in the forums where the nature and size of that tax is decided.

Compounding this injury is the fact that ICANN has severely limited the creation of new Top Level Domains that might provide a choice for those small businesses that are not yet captives of *.com*.

ICANN's Darker Import

In my introduction I mentioned that there are reasons to look at ICANN in a context that goes beyond that of the proposed ICANN-Verisign settlement contract.

Over the nearly 8 years of ICANN's existence it has permitted the creation of a mere handful of new top level domains. And most of those have been limited-purpose TLDs with very restrictive charters. ICANN's new TLDs are, for the most part, entirely useless to the majority of small businesses and internet users.

It has become more than obvious to all observers that ICANN's top level domain policy is a mix of economic, business, legal, social, and moral policy – pretty much anything *except* matters that concern the actual technical stability of the internet.

A few examples will indicate the arbitrary and capricious nature of ICANN's processes and their lack of objective technical foundation.

- ICANN rejected a TLD application, one for which the applicant paid ICANN a \$50,000 application fee, simply because one of ICANN's executives could not pronounce the TLD's name.
- ICANN approved a TLD (*.cat*) for people who speak the Catalan language seemingly because the applicant was a member of ICANN's initial board of directors.
- ICANN shifted the *.edu* TLD to its former CEO.
- ICANN rejected the *.xxx* TLD on the basis of moral rather than technical considerations.
- ICANN has held the application for *.web* in suspension for six years (even though the applicant paid a \$50,000 fee and was considered competent and capable in all regards) simply because more than a decade ago a person affiliated with the applicant brought a civil lawsuit against an internet pioneer.

If ICANN were the FAA and the subject were airplanes rather than domain names, ICANN would be

deciding who could go into the airline business based on what kind of food they serve rather than checking that they maintain their aircraft and use trained, licensed pilots.

ICANN, with the help of the US Department of Commerce, has become that anathema of American business – a combination in restraint of trade.

ICANN is a body that gathers, institutionalizes, and amplifies the desires of a small number of business interests – mainly those of the intellectual property industry, the domain name registry industry, and very large businesses – to shape and limit the domain name marketplace.

- ICANN says the products of that marketplace will be.
- ICANN says what the minimum price of those products will be.
- ICANN says who may sell those products and who may not.
- ICANN says what the terms of sale will be.

ICANN bases these decisions on the social, business, economic, and moral goals and policies of those few groups who are privileged enough to be ICANN “stakeholders”. Small business and internet users have systematically been excluded from that status within ICANN.

ICANN does pretend that it also evaluates the technical capacity of applicants, but those matters that it measures are irrelevant – much as if the FAA measured the flight safety of aircraft only by counting the number of wrenches an airline owns.

This concentration of authority in ICANN would not be so troublesome if it could be bypassed by small businesses and internet users. Unfortunately the internet can not “route around” ICANN.

ICANN's power over the domain name marketplace is so concentrated and all-encompassing that it rivals, and even surpasses, that of J. D. Rockefeller over the oil business in the latter part of the 19th century.

Those of us who wish to enter the domain name business place are denied the opportunity to do so; ICANN places so many obstacles in our paths and so limits the number of awards that, as a practical matter, the domain name business place is closed.

I have a top level domain - *.ewe*. It has existed for several years in virtually all of the DNS roots except the ICANN/NTIA root. Right now it is a hobby kind of thing – but let us not forget that hobbies sometimes grow: Yahoo and Google are just two examples that come to mind. I have a business plan for *.ewe* that is based on permanent registrations. *.Ewe* uses public key cryptography to create “bearer bonds” of ownership; name owners may buy, sell, or exchange their names however they chose. *.Ewe* plans to generate revenue through name maintenance services. All of this is so different from ICANN's mandatory business model for DNS businesses that it has no chance of ever being approved by ICANN.

Is this fair? Is this consistent with the American ethos of innovation and free enterprise?

Conclusion

ICANN was created to oversee the stable technical operation of the top tier of the internet's domain name system, to oversee the distribution of IP addresses, and to provide clerical support to the Internet Engineering Task Force's need to assign protocol numbers.

Of these three jobs, ICANN only does the last.

ICANN has abrogated concern for the technical stability of the top layer of DNS to the root server operators, a loose body of people and entities that do an extremely good job but who are not any under any obligation to continue doing so.

Just as ICANN has evaded its responsibility for the technical stability of DNS, ICANN has also evaded its responsibility for IP addresses: ICANN has let that task fall into the (fortunately) capable hands of the regional address registries – the “RIR”s.

Instead of doing the job it was created to do, ICANN has become a regulatory body that vocalizes and imposes the policy dictates of a small number of “stakeholders”. ICANN's regulations are not concerned with technical stability; rather they are designed to promote and sustain certain business, economic, social, legal, and moral agendas of those “stakeholders”.

ICANN is a throwback to an era of centralized economic planning.

Do we really want an ICANN that manages the internet the way the old USSR managed its economy?

ICANN has orphaned those matters that it was tasked to oversee:

- There is no extant policy or oversight of the root server operators.
- IP address allocation has fallen to other bodies.

Fortunately the stable and reliable operation of the internet has not suffered from this – yet.

Small business needs the internet to operate day-in and day-out. But ICANN has abandoned its obligation to ensure the stable technical operations.

Small business is a laboratory for innovation and enterprise. But ICANN has slammed the door on any but the most orthodox and unimaginative of ideas.

It is my prediction that ICANN will soon be facing several lawsuits, in many countries around the world, based on assertions that ICANN improperly restrains trade.

It is my belief that there is much merit in such assertions.

ICANN could reform itself to rebut those assertions by abandoning its attempts to impose economic, business, legal, and moral policies and do what it was supposed to do from the outset – oversee *technical* issues only.

Unfortunately there are few signs that ICANN is interested in such reforms.