

August 17, 2012

TO: Steve Crocker, ICANN Board Chair

Dear Steve,

We write to you as the chairs of three ICANN entities (the At-Large Advisory Committee, the GNSO Business Constituency, and the GNSO Intellectual Property Constituency) to express our deep disappointment about the Board's decision, taken behind closed doors on June 23, 2012, to renew the .com agreement with Verisign without requiring the registry operator to move toward a thick Whois structure.

We stress that we do not object to the renewal of the .com management by Verisign. Our entities have already expressed, in written comments filed in ICANN's public comments forum, in interventions at the public forum in Prague, and elsewhere, why we believe ICANN was wrong to do so without requiring migration to thick Whois. In this letter, we wish to emphasize how the way this decision was taken undermines ICANN's credibility as the exemplar of a transparent and accountable multi-stakeholder steward for management of the Domain Name System.

In the Affirmation of Commitments, signed in 2009, ICANN pledged "to adhere to responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration." That pledge was violated in the case of the .com renewal. The decision to renew the .com agreement without requiring migration to the thick Whois structure contradicted the reasoned and virtually unchallenged views of numerous public commenters, including our three groups, and did so, not only without a "detailed explanation" of why these views were rejected, but without any explanation whatsoever.

For the Board to take final action on the .com agreement in private, five days prior to a long-scheduled public forum session on the topic, is highly objectionable, and marks a failure to meet the standards of accountability and transparency to which ICANN also committed itself in the Affirmation of Commitments.

The decision also undermines the credibility of ICANN's contractual commitments, and more broadly its ability to act as an effective surrogate for the ICANN community as a whole on contract negotiations. In its current agreement with Verisign, ICANN pledged to conform the .com renewal to the terms of the registry agreements with the five next largest gTLD operators. Four of those five agreements require thick Whois, as will all of the hundreds of gTLD registry agreements into which ICANN expects to enter in the next couple of years. Yet ICANN inexplicably failed to implement a commitment to thick Whois in the .com renewal agreement.

In negotiating the .com renewal agreement, as with its hundreds of other agreements with accredited registrars and gTLD registries, ICANN is at the table, while many businesses, organizations, and individual domain name registrants whose interests are vitally at stake are excluded. If the ICANN model is to succeed, we must be able to count on ICANN to act, as a surrogate, and in the public interest, in conducting these critical negotiations. In this instance, ICANN failed the community. We are extremely concerned about the precedent that has been

set for future contractual negotiations, including those currently underway to revise the Registrar Accreditation Agreement.

As chairs of the ALAC, BC, and IPC, we are well aware that the GNSO Council will be launching a Policy Development Process on the issue of thick Whois. Our entities plan to participate actively in that process and to do what we can to expedite its conclusion. But the availability of a PDP is no substitute for ICANN living up to its commitments to the entire community, as embodied in both the Affirmation of Commitments and in its contractual obligations. We are disappointed that in this important instance, ICANN has failed to do so.

Marilyn Cade, chair, GNSO Business Constituency

Olivier MJ Crépin-Leblond, chair, At-Large Advisory Committee

Steve Metalitz, president, GNSO Intellectual Property Constituency

Cc: Akram Atallah, Interim Chief Executive Officer

ICANN Board Secretary, secretary@icann.org, requesting forwarding to Board list

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