

**Request #1:** Prior to the execution of the .NET Registry Agreement, the Letter of Intent which was included as part of the current .COM registry agreement contained several mutual legal obligations between the parties, including a commitment by Verisign to pay ICANN Org an additional 20 million dollars over 5 years, above and beyond the baseline registry fees.<sup>1</sup> Listed below is an excerpt of some of these obligations:

1. DNS Security Threat Leadership: Verisign and ICANN agree to work in good faith to do the following in order to help combat Security Threats:
  - A. Work with the ICANN community and within ICANN processes to: (i) **determine the appropriate process for developing “best practices” for registry operators to address “Security Threat(s)” (defined as phishing, malware distribution, and botnet command and control), which definition may be expanded to include other threats or be revised to be more fully defined through the mutual agreement of the Parties;** (ii) **develop and make public “best practices” for registry operators in accordance with the processes determined pursuant to Section 1(A)(i);** (iii) **develop new or enhanced contractual obligations based on the result of the work in Section 1(A)(i-ii), as appropriate;** and (iv) **convene subject matter experts within ICANN, the ICANN community and Verisign to meet monthly, or more frequently as appropriate, to work to effectuate the items described in Section 1(A)(i-iii) above.** (emphasis added)
  - B. Within a reasonable period of time following the approval and promulgation by ICANN of the enhanced contractual provisions developed as a result of the work performed pursuant to Section 1A above into the new gTLD base agreement, Verisign will adopt in the .com Registry Agreement such promulgated provisions in a form reasonably appropriate for the .com TLD.
  - C. Verisign and ICANN will develop appropriate tools, methods and metrics, make available technical expertise, and identify funding sources where appropriate, to develop measurement and mitigation criteria for Security Threats targeting or otherwise leveraging the DNS and/or broader DNS ecosystem.
  - D. Verisign and ICANN (on a periodic basis, but at least twice annually) will publish communications (either jointly or individually) to provide education about methods to help DNS stakeholders mitigate Security Threats.

Could ICANN Org please provide the following:

- Any documents related to specific work has ICANN Org and Verisign did “with the ICANN community and within ICANN processes” to develop “best practices” for registry operators to address Security Threats?
- Any documents that either ICANN Org or Verisign developed and made public in connection with registry operator “best practices”?
- Any documents related to “new or enhanced contractual obligations”?

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<sup>1</sup> <https://itp.cdn.icann.org/en/files/registry-agreements/com/com-loi-27mar20-en.pdf>

- Any documents related to the meetings (at least monthly) between itself and Verisign involving subject matter experts relating to Security Threats?
- Any documents related to the “appropriate tools, methods and metrics, make available technical expertise, and identify funding sources where appropriate, to develop measurement and mitigation criteria for Security Threats targeting or otherwise leveraging the DNS and/or broader DNS ecosystem” prepared by either ICANN or Verisign.
- Any published communications (produced at least twice annually) available the “to provide education about methods to help DNS stakeholders mitigate Security Threats.”
- Copies of the annual Confirmation letter(s) of the ICANN Officer confirming “ICANN has incurred costs up to or in excess of the Payment Amount in conducting SSR Activities during the then-expiring SSR Period.”
- Any documents related to the detailed accounting of how these \$4 million dollars were spent.

**Reason for the request:** DNS Abuse (Security Threats) remains an ever-present topic of discussion not only within the ICANN community but the broader global internet community. It is therefore critically important that in connection with Article 3 (Transparency) of the ICANN Bylaws, ICANN Org make this information timely available to the ICANN Community.

**Request #2:** The baseline registry agreement for most ICANN-accredited Registry Operators contains a fixed fee of \$25,000 annually plus a US\$0.25 transaction fee for transactions (registrations, renewals, transfers) above 50,000 units. However, the .NET Registry Agreement between ICANN and Verisign deviates substantially from this baseline agreement in connection with ICANN fees. Specifically, Verisign imposes on registrars an “ICANN fee equal to US\$0.75.”

Could ICANN Org please provide the following:

- Any documents related to the annual aggregate fees received by ICANN Org from Verisign in connection with this provision of the .NET registry agreement (current and past agreements).
- Any documents related to the “special restricted fund for developing country Internet communities to enable further participation in the ICANN mission by developing country stakeholders”
- Any documents related to the “special restricted fund to enhance and facilitate the security and stability of the DNS” including any .NET supply chain security issues, e.g Article 21 of NIS 2.0.
- The .NET agreement contains a provision that “ICANN will not be required to segregate funds for any such purpose or establish separate accounts for such funds.” Can ICANN Org provide any documents provided by or to its auditors or the Board Finance Committee on why the excessive \$4 million dollars Versign pays in connection with .COM (see Request #1 above) appears to be accounted for differently in the ICANN Annual Budget as opposed to the excessive \$6 million that Verisign is paying ICANN Org in connection with .NET?
- Any documents in ICANN Org’s possession on why it believes imposing fees in excess of \$6 million dollars above the baseline registry agreement on Verisign does not constitute “arbitrarily, unjustifiably, or inequitably” actions.

**Reason for the request:** Based upon publicly available information, it appears that Verisign is voluntarily paying ICANN Org in excess of \$10 million annually above what is required in the baseline registry agreements in connection with the .COM and .NET registry agreements. Paragraph 3.2 of the baseline Registry Agreement (equitable treatments) states that “ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.” In light of the recent Namecheap IRP decision in which the panelist called for a potential economic study in connection with the .ORG and .INFO domains the irregularities in connection with ICANN Org negotiations with Verisign renewals of the .COM and .NET raise serious questions about the need for a much broader economic study.

**Request #3:** Upon information and belief ICANN Org, by and through its former CEO, Goran Marby, engaged in a series of discussions with select contracting parties regarding potential contract amendments involving DNS Abuse. In May 2022 several contracting parties met at an Internet & Jurisdiction (I&J) event in Europe. My attempts to obtain access to any documents involving these discussions via my participation in the Registry Stakeholder Group proved unsuccessful. During the public forum at ICANN75, I specifically asked Goran a question about these negotiations. As visible from the Zoom archive Goran read from a prepared statement.

Could ICANN Org please provide the following documents:

- A copy of the document which Goran read in response to my question posed to him at ICANN75 public forum.
- Any meeting invitations between ICANN Org and the contracting parties at or before ICANN75.
- Any documents exchanged between and Contracting Parties and ICANN Org following the May 2022 Internet & Jurisdiction (I&J) involving: DNS Abuse; Security Threats (as defined in the ICANN Org and Verisign Letter of Intent); contract negotiations; and any GNSO policy development in the area of DNS Abuse.
- Any list (email, Skype, etc) of contracting parties engaged in these negotiations pre July 2022.
- The readout of the I&J May event identified Trusted Notifier as being a topic of discussion during this event. In 2018 Verisign and the NTIA entered into amendment 35 to the cooperative agreement which stated in relevant part that “NTIA looks forward to working with Verisign and other ICANN stakeholders in the coming year on trusted notifier programs to provide transparency and accountability in the .com top-level domain.”<sup>2</sup> Can ICANN Org provide any documents related to discussions it held with any contracting parties regarding a Trusted Notifier Program since 2018.
- Can ICANN Org provide any documents (e.g. talking points) provided to it by contracting parties in advance or at the ICANN75 annual meeting in relation to any of the subject matter covered by the DIDP request?

**Reason for the request:** In the interest of openness and transparency I currently serve as a member of the Registry Stakeholder Groups (RySG) negotiating team to amend the RA to enhance DNS Abuse obligations. However, this request is being made in an individual capacity and this DIDP request only involves documents in the possession of ICANN prior to July 2022. The reason for this request is that I am concerned regarding how any pre-negotiations between ICANN Org and select contracting parties might have skewed the negotiations before the respective Registry and Registrar Stakeholder Groups were able to consult with their full members.

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<sup>2</sup> <https://www.ntia.doc.gov/press-release/2018/ntia-statement-amendment-35-cooperative-agreement-verisign>

**Request #4:** Can ICANN please make available the Zoom recordings from the ICANN Contracting party summit held in Los Angeles, California on November 1<sup>st</sup> thru the 4<sup>th</sup>, see <https://www.icann.org/cpsummit>

**Reason for the request:** Pre-covid, ICANN had made gatherings between the contracting parties open to third parties within the broader ICANN community, including making the recordings of these events publicly available, see for example <https://www.icann.org/resources/pages/gdd-summit-bangkok-2019-10-17-en> (recordings from GDD Summit 2015-2019). However, in connection with the 2022 ICANN Contracting Party Summit ICANN has not yet made these recordings available. Despite the title of this event, there were non-contracting parties in attendance including the majority of the ICANN Board which had just concluded an in-person retreat/meeting. I believe there is a growing concern with the broader ICANN community that ICANN is on the precipice of becoming a trade association. In light of this concern, ICANN should adhere to Article 3, Section 3.1 of its bylaws that state “ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.”