

# Summary of Draft Revisions to VeriSign Settlement Agreement/.COM Registry Agreement

29 January 2006

Issue	Agreement Revision	Summary
<p>Issue #1: ICANN fees of US\$0.45 and then US\$0.50 and would be passed through to registrars.</p> <p>Registries' ability to directly pass-through fees means that registries do not adequately share the burden of supporting ICANN.</p>	<p>Section 7.2 <u>Fees to be Paid to ICANN.</u></p> <p><u>(a) Initial Fees.</u> On the Effective Date, Registry Operator shall make a one-time lump sum payment of US\$<del>1.25 million</del><u>625,000</u> to an account designated by ICANN. The uses of these initial fees shall include meeting the costs associated with establishing structures to implement the provisions of this agreement.</p> <p><del>(b) <u>Fixed Registry-Level Fee.</u> Registry Operator shall pay ICANN a quarterly Fixed Registry-Level Fee in an amount equal to US\$43,725 for each fiscal quarter during the twelve-month period ending June 30, 2006. The first quarterly payment of the Fixed Registry-Level Fee shall be prorated from the Effective Date until the end of the calendar quarter in which the Effective Date falls. Such fee is subject to increase on July 1 of each year thereafter in an amount established by ICANN's Board of Directors, but not to exceed a sum equal to 115% of the prior year's fee. One dollar (USD) of the Fixed Registry-Level Fee shall be waived for each dollar that the ICANN Registry-Level Transaction Fee exceeds US\$2,000,000 per annum.</del></p> <p><u>(b) Fixed Registry-Level Fee.</u> Registry Operator shall pay ICANN, to an account designated by ICANN, a Fixed Registry-Level <del>Transaction Fee.</del> Commencing on 1 January <u>Fee as provided below.</u> <u>Payments</u></p>	<p>In the proposed revision to the settlement terms, ICANN will forego the US\$0.45/.50 would have been passed on directly to registrars. Instead, VeriSign will directly pay ICANN a fixed registry level fee, which fee will not be passed on directly to registrars, beginning at US\$6 million per year and going up over the next two years to approximately US\$12.0 million, marking a significantly increased payment by VeriSign and share of the burden of supporting ICANN.</p> <p>This represents a reduction in the amount of fees ICANN expected to receive under the previous per-transaction plan. However, ICANN will be able to meet its revenue targets through a combination of this increased fixed fee, and the anticipated continuation of the US\$0.25 per transaction variable registrar-level fee.</p>

shall be made as follows: Beginning 1 July 2006 through 31 December 2006, Registry Operator shall ~~pay ICANN~~begin prepayment of the ~~ICANN2007 Fixed~~ Registry-Level Transaction Fee in an amount initially equal to US\$0.37, increasing to \$0.45 and \$0.50 on 1 July 2006 and 2007, respectively, for each annual increment of an initial or renewal domain name registration and for transferring a domain name registration from one ICANN-accredited registrar to another during the calendar quarter to which the ICANN Registry-Level Transaction Fee pertains. For the Initial Six Month Period, Registry Operator shall pay to ICANN an estimated prepayment in the aggregate amount of \$7.8 million ("Prepayment Amount") for the ICANN Registry-Level Transaction Fees in equal monthly installments of \$1.3 million on the 20<sup>th</sup> day of each month of the Initial Six Month Period to an account designated by ICANN. After the Initial Six Month Period, the next quarterly payment due under Section 7.2 (b) shall automatically be: (i) reduced in the amount by which the Prepayment Amount exceeds the actual aggregate ICANN Registry-Level Transaction Fees during the Initial Six Month Period; or (ii) increased in the amount by which such actual aggregate ICANN Registry-Level Transaction Fees during the Initial Six Month Period exceed the Prepayment AmountFee in equal monthly payments such that the total payments per quarter is US\$1,500,000. Beginning 1 January 2007, equal monthly payments for quarters ended 31 March 2007 and 30 June 2007 shall be paid such that the total payments per quarter, calculated net of the prepayments during the quarters ended 30 September 2006 and 31 December 2006, is US\$1,500,000. Beginning 1 July 2007, equal monthly payments for quarters ended 30 September 2007, 31 December 2007, 31 March 2008, and 30 June 2008, shall be paid such that the total payments per quarter is US\$2,000,000. Beginning

1 July 2008, equal monthly payments will increase such that the total payments per quarter will equal US\$3,000,000. Equal monthly payments shall continue such that the total payment per quarter will equal US\$3,000,000 except that after 1 July 2009: (i) if the total number of annual domain name registrations increases by a total of ten million over the total number of domain name registrations on the Effective Date of the Agreement, the equal monthly payments shall increase by an amount totaling \$750,000 per quarter, for each quarter that the increased level of annual domain name registrations is maintained; (ii) if the total number of annual domain name registrations increases by a total of twenty million over the total number of domain name registrations at the time of the Effective Date of the Agreement, the equal monthly payments shall increase by an amount in addition to that set forth in 7.2(a)(i), totaling \$750,000 per quarter, for each quarter that the increased level of annual domain name registrations is maintained; provided, however, if at any time after the Effective Date, the total number of annual domain name registrations falls below the total number of domain name registrations on the Effective Date of the Agreement, or, if applicable, the total number of annual domain name registrations in 7.2(a)(i) and 7.2(a)(ii) above, the equal monthly payments shall be reduced by US\$25,000 per month for every 1 million annual domain name registrations reduction. ICANN intends to apply this fee to purposes including: (a) a special restricted fund for developing country Internet communities to enable further participation in the ICANN mission by developing country stakeholders, (b) a special restricted fund to enhance and facilitate the security and stability of the DNS, and (c) general operating funds to support ICANN's mission to ensure the stable and secure operation of the DNS.

(c) Variable Registry-Level Fee. For fiscal quarters in which ICANN does not collect a variable accreditation fee from all registrars, upon receipt of written notice from ICANN, Registry Operator shall pay ICANN a Variable Registry-Level Fee. The fee will be calculated by ICANN; ~~paid to ICANN by the Registry Operator in accordance with the Payment Schedule in Section 7.2(b), and the~~ The Registry Operator ~~will~~shall invoice and collect the fees from the registrars who are party to a Registry-Registrar Agreement with Registry Operator and paid to ICANN by the Registry Operator by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN. The fee will consist of two components; each component will be calculated by ICANN for each registrar:

(i) The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year but shall not exceed US\$0.~~15~~[25].

(ii) The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year, but the sum of the per-registrar fees calculated for all registrars shall not exceed the total Per-Registrar Variable funding established pursuant to the approved 2004-2005 ICANN Budget.

<p>Issue #2: VeriSign price increase (the maximum 7% per-year cap) is inappropriate, too high, and should be tied to increases in costs.</p>	<p>Section 7.3 <u>Pricing for Domain Name Registrations and Registry Services.</u></p> <p>(d) <u>Maximum Price.</u> The Maximum Price for Registry Services subject to this Paragraph 7.3 shall be as follows:</p> <p>(i) from the Effective Date through 31 December 2006, US\$6.00;</p> <p>(ii) for each calendar year beginning with 1 January 2007, the smaller of the preceding year's Maximum Price or the highest price charged during the preceding year, multiplied by 1.07; <u>provided, however, that such increases shall only be permitted in four years of any six year term of the Agreement. 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 resulting from an attack or threat of attack on the Security or Stability of the DNS, not to exceed the smaller of the preceding year's Maximum Price or the highest price charged during the preceding year, multiplied by 1.07.</u></p>	<p>VeriSign's ability to potentially raise prices is reduced in the proposed revised settlement agreement; they can now raise prices only four years out of the six-year term of the agreement. Any additional price increases (also limited to a one-time 7% increase) would have to be based on costs incurred "due to the imposition of any new Consensus Policy or documented extraordinary expense resulting from an attack or threat of attack on the Security or Stability of the DNS."</p>
<p>Issue #3: The process for consideration of new registry services (i.e., the funnel) that is written into the proposed agreement cannot be</p>	<p>.COM Agreement Section 3.1(b)</p> <p>(v) In addition to the other limitations on Consensus Policies, they shall not:</p> <p>(A) prescribe or limit the price of Registry Services;</p> <p>(B) modify the standards for the consideration of proposed</p>	<p>The revised settlement proposal reduces from three-years to two years the period during which ICANN could not change the process for consideration of proposed registry</p>

<p>changed by the Policy Development Process for a period of three years.</p> <p>Also, the process defined in the PDP issued by the GNSO is not identical to the process defined in the proposed agreement.</p>	<p>Registry Services, including the definitions of Security and Stability (set forth below) and the standards applied by ICANN;                  (C) for <del>three</del><u>two</u> years following the Effective Date, modify the procedure for the consideration of proposed Registry Services;</p>	<p>services.</p> <p>In accordance with the public comments by some constituency members, other registry agreements are being renegotiated to provide a level playing field.</p>
<p>Issue #4: The proposed settlement continues and extends VeriSign's "presumptive renewal" right in relation to the .COM registry. VeriSign's ability to increase price also carries forward into subsequent agreements.</p>	<p>(No change.)</p>	<p>It is important to point out the presumptive renewal right is present in the 2001 .COM agreement and calls for that right to be carried forward in subsequent agreements. Nothing prevents competition agencies such as the US Dept of Justice to review price increases at any time including a review when the agreement is subsequently renewed.</p>
<p>Issue #5: The proposed language in the agreement with respect to the "Traffic Data" provision does not appear to preclude use of personally identifiable data, may be construed incorrectly by some to consent to SiteFinder-like services, and does not reference non-</p>	<p>3.1(f) <u>Traffic Data</u>. Nothing in this Agreement shall preclude Registry Operator from making commercial use of, or collecting, traffic data regarding domain names or non-existent domain names for purposes such as, without limitation, the determination of the availability and health of the Internet, pinpointing specific points of failure, characterizing attacks and mis-configurations, identifying compromised networks and hosts, and promoting the sale of domain names; provided, however, that such use does not disclose domain name registrant <del>or</del> end user information <u>or other Personal Data as defined in Section 3.1(c)(ii) for any purpose not otherwise authorized by this agreement</u>.                  The process for the introduction of new Registry Services shall not apply to</p>	<p>The "Traffic Data" provision has been renegotiated to include additional safeguards relating to "Personal Data," non-discriminatory access, and to provide clarity that the provision does not constitute consent for any "SiteFinder"-like service.                  The proposed revised agreement provides that "To the extent that traffic data subject to this provision is made</p>

<p>discriminatory access to the data.</p>	<p>such traffic data. <u>Nothing contained in this section 3.1(f) shall be deemed to constitute consent or acquiescence by ICANN to a re-introduction by Registry Operator of the SiteFinder service previously introduced by the Registry Operator on or about September 15, 2003, or the introduction of any substantially similar service employing a universal wildcard function intended to achieve the same or substantially similar effect as the SiteFinder service. To the extent that traffic data subject to this provision is made available, access shall be on terms that are non-discriminatory.</u></p>	<p>available, access shall be on terms that are non-discriminatory."</p>
<p>Issue #6: VeriSign's obligation to invest US\$200 million in development and infrastructure was eliminated in the proposed settlement agreement.</p>	<p><u>3.1 (g) Security and Stability Review. Twice annually Registry Operator shall engage in discussions with executive staff of ICANN and the Chairman of the Board of ICANN on trends impacting the Security and/or Stability of the Registry, the DNS or the Internet pursuant to the terms of confidentiality agreements executed both by the executive staff of ICANN and the Chairman of the Board.</u></p>	<p>VeriSign has provided confidential reports to ICANN describing substantial investments in infrastructure and development. The original purpose of this provision has been met and superseded by substantial compliance and investment, and VeriSign's record of performance. The security and stability reviews provided for in the revised agreement will provide ICANN with a more meaningful exchange than earlier one-way reports on investment in that there will be two-way sharing regarding recent threats, opportunities and developments.</p>
<p>Issue #7: The original settlement proposal did not incorporate SLA-type performance specifications for .COM that are common in</p>	<p><b>7. Performance Specifications</b>  <u>For purposes of this Section 7, "DNS Name Server" means the service complying with RFC 1034 made available on TCP/UDP port 53 on Registry Operator's selected servers; "Round-trip" means the amount of time that it</u></p>	<p>The proposed revised agreement includes performance specifications not previously contained in prior .COM agreements relating to: end user latency and DNS Name Server</p>

other TLDs.

takes for a remote nameserver to respond to queries; "Core Internet Service Failure" means extraordinary and identifiable events beyond the control of Registry Operator affecting the Internet services to be measured pursuant to this section, including but not limited, to congestion collapse, partitioning, power grid failures, and routing failures; DNS Name Server unavailability shall mean less than four (4) sites on the Registry Operator's constellation are returning answers to queries with less than 2% packet loss averaged over a Monthly Timeframe; and "Monthly Timeframe" means each single calendar month beginning and ending at 0000 Coordinated Universal Time (UTC). The requirements in this Section 7 set forth below are not matters subject to SLA Credits under the Service Level Agreement set forth on Appendix 10 or obligations upon which a breach by Registry Operator of the Registry Agreement may be asserted.

A. Cross-Network Name Server Performance Requirements. The committed performance specification for cross-network name server performance is a measured Round-trip of under 300 milliseconds and measured packet loss of under 10% over the course of a Monthly Timeframe. Cross-network name server performance measurements may be conducted by ICANN, pursuant to the terms of confidentiality agreements executed both by ICANN and its employee or consultant conducting the testing, in the following manner:

1. The measurements may be conducted by sending strings of DNS request packets from each of four measuring locations to each of the .com DNS Name Servers and observing the responses from the .com DNS Name Servers. (These strings of requests and responses are referred to as a "CNNP Test".) The measuring locations will be four root name server locations on the US East Coast, US West Coast, Asia, and Europe.

2. Each string of request packets will consist of 100 UDP packets at 10 second

availability.

intervals requesting nameserver records for arbitrarily selected .com second-level domains, preselected to ensure that the names exist in the Registry TLD and are resolvable. The packet loss (i.e. the percentage of response packets not received) and the average Round-trip time for response packets received may be noted.

3. To meet the packet loss and Round-trip requirements for a particular CNNP Test, all three of the following must be true:

(a) The Round-trip and packet loss from each measurement location to at least one .com name server must not exceed the required values;

(b) The packet loss to each of the .com name servers from at least one of the measurement locations must not exceed the required value; and

(c) Any failing CNNP Test result obtained during an identified Core Internet Service Failure shall not be considered.

4. To ensure a properly diverse testing sample, ICANN will conduct the CNNP Tests at varying times (i.e. at different times of the day, as well as on different days of the week). Registry Operator may only be deemed to have persistently failed to meet the cross-network name server performance requirement only if the .com DNS Name Servers fail the CNNP Tests (see Section 7.3 above) with no less than three consecutive failed CNNP Tests.

5. In the event of persistent failure ( defined as failure of three consecutive tests) of the CNNP Tests, ICANN will give Registry Operator written notice of the failures (with backup data) and Registry Operator will have sixty days to cure the failure.

6. Sixty days prior to the commencement of testing under this provision,

	<p><u>ICANN will provide Registry Operator with the opportunity to evaluate the testing tools, root name server locations and procedures to be used by ICANN. In the event that Registry Operator does not approve of such tools and procedures, ICANN will work directly with Registry Operator to make necessary modifications.</u></p> <p><u>7. ICANN will provide written notification to Registry Operator of the results of any testing within 5 days of completion of testing, including the method used for testing, administrator used to conduct the test and the location of testing. Within 30 days of receipt of notice the testing results, Registry Operator may request that the test be re-administered in the presence of a Registry Operator employee. This second test must be administered within 30 days of Registry Operator's request.</u></p> <p><u>B. Service Availability—DNS Name Server = 100% per Monthly Timeframe. Service Availability as it applies to the DNS Name Server refers to the ability of the DNS Name Server to resolve a DNS query from an Internet user. DNS Name Server unavailability will be logged with the Registry Operator as Unplanned Outage Minutes. Registry Operator will log DNS Name Server unavailability when such unavailability is detected by VeriSign monitoring tools. Any DNS Name Server unavailability occurring during an identified Core Internet Service Failure shall not be considered.</u></p>	
<p>Issue #8: VeriSign's obligation to implement a centralized Whois service, if required to by ICANN, in the 2001 .COM agreement was eliminated in the proposed settlement agreement.</p>	<p><u>3.1 (h) Centralized Whois. Registry Operator shall develop and deploy a centralized Whois for the .com TLD if mandated by ICANN insofar as reasonably feasible, particularly in view of Registry Operator's dependence on cooperation of third parties.</u></p>	<p>The proposed revision re-incorporates the language concerning VeriSign's existing obligation to "develop and deploy a centralized Whois for the .com TLD if mandated by ICANN insofar as reasonably feasible, particularly in view of Registry Operator's dependence on cooperation of third parties."</p>

Issue #9: The Root Zone Management Transition Agreement did not specify that the Internet Architecture Board would have a continuing role in the administration of the ARPA zone.

*(Root Server Management Transition Agreement) ...*

Therefore, ICANN and VeriSign agree that they shall:

- a. Collaborate with respect to operational and security matters relating to the secure and stable operation of the domain name system in order to develop and implement recommendations for improvements in those matters;
- b. Work together regarding procedures and best practices for the operation of the root name server system;
- c. Work together to establish a timetable for the completion of the transition to ICANN of ~~the~~ those technical coordination and management functions currently undertaken by VeriSign with respect to the ~~of~~ ARPA TLD and the root zone system, in particular to enable ICANN to edit, sign and publish the root zone and ARPA zones commencing in ~~2005 and completing by~~ 2006, with the understanding that this requires the cooperation and readiness of the full family of root server system operators, and with the further understanding that this transition of technical responsibilities will be conducted in consultation with the Internet Architecture Board and will not modify the guiding role of the IAB in the administration of the ARPA zone;

The Root Server Management Transition Agreement has been modified to clarify the continuing role of the Internet Architecture Board.