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# CONTRACTING THE INTERNET: DOES ICANN CREATE A BARRIER TO SMALL BUSINESS?

## HEARING

BEFORE THE

## COMMITTEE ON SMALL BUSINESS
## HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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# CONTENTS

## WITNESSES


| | Page |
|---|---|
| Burr, Ms. J. Beckwith, Partner, WilmerHale | 3 |
| Jeffrey, Mr. John, General Counsel & Secretary, Internet Corporation for Assigned Names and Numbers (ICANN) | 5 |
| White, The Honorable Richard, Member, VeriSign's Internet Advisory Board | 8 |
| Mitchell, Mr. W.G. Champion, Chairman and Chief Executive Officer, Network Solutions LLC | 11 |
| DelBianco, Mr. Steven, Executive Director, NetChoice | 13 |
| Goren, Mr. Craig, Chief Executive Officer, Clarity Consulting | 16 |


## APPENDIX


| | |
|---|---|
| Opening statements: | |
| Manzullo, Hon. Donald A. | 29 |
| Prepared statements: | |
| Burr, Ms. J. Beckwith, Partner, WilmerHale | 31 |
| Jeffrey, Mr. John, General Counsel & Secretary, Internet Corporation for Assigned Names and Numbers (ICANN) | 37 |
| White, The Honorable Richard, Member, VeriSign's Internet Advisory Board | 44 |
| Mitchell, Mr. W.G. Champion, Chairman and Chief Executive Officer, Network Solutions LLC | 50 |
| DelBianco, Mr. Steven, Executive Director, NetChoice | 63 |
| Goren, Mr. Craig, Chief Executive Officer, Clarity Consulting | 77 |

# CONTRACTING THE INTERNET: DOES ICANN CREATE A BARRIER TO SMALL BUSINESS?

**WEDNESDAY, JUNE 7, 2006**

HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS
*Washington, DC*

The Committee met, pursuant to call, at 2:00 p.m., in Room 2360 Rayburn House Office Building, Hon. Roscoe Bartlett [Vice-Chairman of the Committee] presiding.

Present: Representatives Bartlett, Kelly, Musgrave, Fitzpatrick, Velazquez.

Chairman BARTLETT. The Committee will come to order. Just a word of explanation as to why I am sitting here rather than the usual occupant, my very good friend and classmate, Chairman Manzullo. His wife is having surgery today, unexpected in a sense apparently. I did not know until last evening that I needed to be here today so I need to apologize for two things. One, that I was not better prepared for the hearing. Had I known I would be the Chair I would have been better prepared.

Secondly, for the fact that I may have to briefly recess the hearing if there is not another Republican here on the dias because I am also on the Science Committee which will meet in 25 minutes to mark up five bills and there will be some contentious votes during some of those bills, but fortunately they are on the same floor in the same building, just around the corner so they will let me know when I need to go.

If there is not another member here to turn the gavel over to, I will very briefly have to recess the meeting and then come back. The Chairman has a statement which we will submit for the record. Let me turn now to the Ranking Member Ms. Velazquez.

[Chairman Manzullo's opening statement may be found in the appendix.]

Ms. VELAZQUEZ. Thank you, Mr. Chairman. I welcome the witnesses. It cannot be underestimated how important technology is to small businesses. Today we look at issues regarding the Internet and its availability to small businesses.

Increasingly small businesses are turning to the Internet and starting their own websites to market their businesses. From beauty salons to motor vehicle dealers posting their services, hours, and location in addition to answers to frequently asked questions is valuable and will only expand and help grow their businesses.

We need to make sure that this continues to be a readily available and affordable option for this nation's 23 million entrepreneurs. Seventy-seven percent of small business owners who

have a website agree that it is a must for small business and 60 percent say they wish they had built one for their business sooner. The website allowed these entrepreneurs to enhance their advertising efforts by placing pre-detailed information, reports, and other beneficial content in a place where anyone can access it.

For the most part, basic websites are becoming a core part of the market and plan for many small businesses and so far the cost of standard Internet use such as simple websites and e-mail have fit well within the marketing budget of small businesses. A large percentage of small businesses are waiting to spend money and resources to use the Internet as part of their relationships with customers. In fact, 61 percent of entrepreneurs feel that the website has added to the bottom line.

Many small business owners, 51 percent, currently view the Internet as more cost effective than other marketing methods. In 2002 39 percent of small business owners planned to market their business on the Internet as opposed to 27 percent by direct mail, 26 percent in newspapers or magazines, and 24 percent in the Yellow Pages.

The hearing today will examine the Internet and its access for small businesses. It is important that the Internet and websites remain affordable options for entrepreneurs, not just for today but for the future as well. I look forward to hearing the witnesses' testimony so that the Committee has a better understanding of this proposed settlement and its impact on small businesses.

The Internet is becoming a vital component of small businesses marketing an outreach plans. Today we need to make sure that small firms will consistently be able to afford and have access to website ownership. Thank you, Mr. Chairman.

Chairman BARTLETT. It is not usual that Government becomes involved in a situation like this. Our apologies for the appearance that we are trying to intrude to Government where Government has no business being.

A primary function of this hearing today is to get the facts on the table because apparently there is a lot of disagreement as to exactly what this settlement portends for the Internet community, and especially for small businesses so we thank you very much for coming, especially those of you who traveled considerable distances to get here. We will begin now with our witnesses.

Our first witness is Ms. J. Beckwith Burr. Ms. Burr is currently a partner at Wilmer, Cutler, Picker, Hale and Dorr here in D.C., but more relevant to our proceedings today she was the Director of the Office of International Affairs at NTIA during the Clinton Administration and was the lead Commerce staffer on the transition to private sector management of the DNS at the time ICANN was formed.

Ms. Burr, and then we will introduce the other witnesses when their turn comes. The floor is yours.

Ms. BURR. Thank you, Mr. Chairman.

Chairman BARTLETT. Let me first say that all of your written statements without objection will become part of the permanent record so you are free to summarize any way you wish. Thank you.

**STATEMENT OF J. BECKWITH BURR, WILMERHALE**

Ms. BURR. Thank you, Mr. Chairman. Prior to returning to private practice I was, indeed, the primary USG interface with ICANN so that very polite introduction may have been staff code for "it is all her fault" which, I suppose, is why I have been asked to provide some background on the original and purpose of the Department of Commerce approval rights in the registry agreement between ICANN and VeriSign.

In the spring of '92 the nonmilitary Internet was still largely a creature of the academy. There was no World Wide Web or user-friendly browser. Network Solutions operated registries for the nonmilitary Internet top-level domains and provided end user registration services under a cooperative agreement with the National Science Foundation.

By 1998 when the cooperative agreement was scheduled to expire, the commercial Internet had exploded. Given its research orientation, NSF determined to end its role in management of the DNS by letting the cooperative agreement expire and permitting VeriSign to carry on. Had everything proceeded as expected, the cooperative agreement might have expired without anyone noting. Instead, as we know, lots of people noticed and that is why we are here.

As the cooperative agreement's final expiration date approached, it became clear that the structure in place to manage the DNS was not going to scale. Policy authority resided with a single, although well-respected, human being. Dr. John Postel's consensus-building skills were legendary in the technical community but they were less suited to a litigious commercial setting.

Meanwhile VeriSign, and I will refer to the registry services as VeriSign, appeared to control the most valuable commercial assets associated with the public Internet, the .com, .net, and .org top-level domains. There were lots of objections to dispute resolution procedures, the amount of money VeriSign was making, and the general dominance of the U.S. based generic top-level domains. It was clear, on the one hand, that the U.S. Government could not simply walk away from the DNS management problem at that point. On the other hand, the ITU was looking for a new job and any U.S. mandated solution would clear be unacceptable internationally.

Accordingly, the U.S. Government set out to develop global consensus for private sector management of the DNS. After extensive consultation, the Commerce Department articulated the emerging consensus in a document known affectionately in some places as the White Paper, and embarked on what was intended to be an orderly transition to private sector management of the DNS.

Of course, the transition has been anything but orderly. VeriSign predictably was not enthusiastic about relinquishing its control of the generic TLDs. The allocation of rights and responsibilities under the cooperative agreement was murky as were the sources and limits on Dr. Postel's authority for the collection of activities that came to be known as the Internet Assigned Number Authority, or the IANA. When the Commerce Department extended the cooperative agreement it fixed some of the problems but not all. In October of 1998 VeriSign agreed to get on board the privatization

train and to see effective control over the authoritative route to the Commerce Department. In the months that followed the Commerce Department recognized ICANN and began a transition to really back to private sector management.

The registry agreement between ICANN and VeriSign was a critical piece of this transition and the Commerce Department was at the table of those negotiations for several reasons. Most of VeriSign's obligations under the cooperative agreement would have to be superseded by a registry agreement with ICANN. The U.S. Government wanted to ensure that any such agreement preserved the contractual concessions attained in Amendment 11. U.S. Government also wanted to be sure that something was in place if the agreement between VeriSign and ICANN fell apart.

Finally, given the degree of mistrust that had developed in the intervening months between ICANN and VeriSign the Commerce Department was needed as an honest broker. I believe both parties would have said that.

In short, the Commerce Department's approval right in the registry agreement was intended to do two things. To protect the newly achieved legal clarity about the A root and to facilitate the VeriSign ICANN relationship during the transition period.

In both of these roles as in most everything it did here, the role of the Commerce Department was to serve as a trustee for the interest of the global Internet community in a successful transition to private sector management of the DNS based on the White Paper principles of stability, competition, bottom-up policy development by a representative organization.

It may help to contrast or to think of this in the context of the Department's residual control over the A root. There in its capacity as trustee the DOC has to use its authority in a manner that is consistent with the White Paper principles. Given that the transition to private sector management was, as it so clearly remains today, dependent on the support of the global Internet community, use of the retained authority had to be acceptable to stakeholders including our Government partners around the world in this transition.

Finally, any use of that authority had to be faithful to the "what goes around comes around" principle of Internet regulation championed by the U.S. and other countries in the mid '90s. Individual governments should generally refrain from regulatory activity in favor of market forces, industry self regulation, and bottom-up consensus policy development.

The contract approval clause has a slightly different pedigree. As I said, the Commerce Department was there to serve as an honest broker. In the event that one party thought the other was abusing its power or contravening the White Paper principles, it could appeal to the Commerce Department which could, in turn, attempt to facilitate a sensible outcome consistent with the White Paper blueprint.

Community has not discussed how this approval authority might be appropriately exercised in the intervening years but if we take as a given, as I do, that the role of the Department of Commerce is in all cases to facilitate private sector management of the DNS

in accordance with the principles articulated in the White Paper, two questions arise.

First, is the proposed contract inconsistent with the White Paper principles or does it reflect some imbalance in bargaining positions that undermines private sector management of the DNS? If the answer to that question is yes, you must go on to consider whether intervention will further and not undermine the success of the ICANN experiment.

This question must be addressed on both a substantive and procedural level. No matter where one comes out on the merits or deficiencies of the .com agreement, I don't know anyone who thinks that this was a particularly good process. In my testimony I have provided some suggestions, for what they are worth, and I will stop here and happy to take questions.

Chairman BARTLETT. Thank you.

[Ms. Burr's testimony may be found in the appendix.]

Chairman BARTLETT. Our next witness is Mr. John Jeffrey. Mr. Jeffrey is the General Counsel and Secretary of the Internet Corporation for Assigned Names and Numbers, otherwise known as ICANN, based in Marina Del Ray, CA. ICANN is an internationally organized nonprofit corporation responsible for managing and coordinating the domain name system to ensure that every address is unique, that all users of the Internet can find all valid addressees.

When I think about the illegal immigrant problem, I think about how wonderfully the private sector has solved many problems and how maybe we ought to be enlisting their help. I go to make a purchase and in a few seconds they know whether or not my Discovery credit card is okay. I am sure that there are more credit cards than there are illegal immigrants so I would suggest that we don't need 14 days to determine whether an immigrant is legal or not.

Mr. Jeffrey, the floor is yours.

## STATEMENT OF JOHN JEFFREY, INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)

Mr. JEFFREY. Thank you, Mr. Chairman, for the opportunity to speak before the Small Business Committee. ICANN is recognized by the world community as the global authoritative body on the technical coordination and organizational means to ensure the stability and interoperability of the Internet's domain name and numbering systems. I am pleased to speak before your Committee as we are very proud of ICANN's role in the domain system and ICANN's role in helping to facilitate a global interoperable Internet used by America's small businesses and small businesses throughout the world.

Since 1998 ICANN's self-governance model has succeeded in addressing stakeholder issues as they have appeared and in bringing lower cost and better services to DNS registrants and everyday users of the Internet. Among ICANN's main achievements are the following:

Streamlining of domain name transfers. ICANN developed a domain name transfer policy that allows domain name holders to transfer management of their domain names from one registrar to another bringing further choice to domain name holders.

Market competition. Market competition for generic top-level domain registrations established by ICANN has lowered domain name cost in some instances as much as 80 percent with savings for both consumers and businesses.

Choice of top-level domains. ICANN continues to introduce new top-level domains to give registrants right of choice. These include the introduction of seven new gTLDs in 2000 and four additional ones so far from the 2004 sponsored top-level domain names round. The uniform dispute resolution policy, also called the UDRP. This policy has resolved more than 6,000 disputes over the rights to domain names and has proven to be efficient and cost effective.

Internationalized domain names, or IDNs, working in coordination with the appropriate technical communities and stakeholders ICANN's adopted guidelines have opened the way for domain name registration in hundreds of the world's languages. Since ICANN was founded in 1998 ICANN has entered into many private arm's length agreements with registries that run the generic top-level domains and with registrars who are accredited by ICANN to sell those domains directly to consumers and businesses.

A 2004 report by the OECD stated that, "ICANN's reform of the market structure for the registration of generic top-level domain names has been very successful. The division between registry and registrar functions has created a competitive market that has lowered prices and encouraged innovation. The initial experience with competition at the registry level in association with a successful process to introduce new gTLDs has also shown positive results."

Now I will address the difference between the competition picture in 1998 and in 2006. In 1998 there were only three main generic top-level domain registries, .com, .net, and .org from which domain names could be purchased by businesses and consumers. Only one company was running all three registries, Network Solutions. Most registrations by small businesses were only in one registry, .com. The price of a single domain name in .com in 1998, based upon the information I could gather, was greater than $50 per domain name per year. The competition in 2006 is much different.

The .com registry now controlled by VeriSign maintains a significant percentage of the marketplace but now accounts for less than 50 percent of the world market. The price for a .com registration today depends on where you purchase the name from, but in some instances the price of a domain name has been reduced significantly by as much as 80 percent.

On June 4th the price of a .com domain name for a one-year registration at GoDaddy, the largest registrar by market share, was $8.95, or $6.95 if you are transferring from another registrar. The price at Network Solutions, now a separate registrar business here at the panel, and is now only partially owned by VeriSign, is $34.99 per year and they have varying plans relating to that that I am sure Mr. Mitchell can address.

Small businesses today can choose from over 688 ICANN accredited registrars derived from 261 unique business groups located in 39 different countries. In addition to the greater choice in registrars, consumers also have a greater choice regarding which top-level domain they may use, some specialized for specific areas.

Between 2000 and today 11 new generic top-level domains have been introduce. Four of those TLDs, .cat., .jobs, .mobi, and .travel have signed agreements with ICANN in 2005 and 2006. ICANN currently accredits domain name registrars to sell names in the following top-level domains, .aero, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, and .travel. In addition, an agreement for the introduction of .tel was recently completed and negotiations continue relating to other top-level domains from the 2004 found.

I'll now address the VeriSign settlement agreement and the proposed .com registry agreement. On October 24, 2005, ICANN announced a proposed settlement to end the long-standing dispute with VeriSign, the registry operator com and net. The proposed agreement between ICANN and VeriSign provided for the settlement of all existing disputes between ICANN and VeriSign and a commitment to prevent any future disagreements from resulting in costly and disruptive litigation.

Under the current VeriSign com registry agreement, VeriSign has permitted an automatic renewal of the com agreement. That original renewal clause was a key factor in the negotiation of the 2001 .com agreement and was added in exchange for concessions relating to the yielding of VeriSign's rights in .org and opportunity for a rebidding process relating to the .net registry. Subsequently, .org was transferred to the public interest registry in 2001 and .net was rebid in 2005. Independent evaluators after a careful review re-awarded the net registry to VeriSign and a new agreement was executed between VeriSign and ICANN for net last year. As part of that rebid the wholesale price of net domain name registrations was lowered from $6.00 to $4.25 for the registrars. It is noteworthy, however, that the reduction in price was not in any measurable way past through by registrars to small businesses or consumers.

The price of $6.00 which was set during the first .com registry agreement with ICANN in 1999 has not been subject to review or increase during the past seven years. ICANN agreed in the proposed new com agreement to allow VeriSign to increase the price of .com registration by up to 7 percent per annum. Following public comments, ICANN and VeriSign renegotiated the terms in December and January and agreed to limit those proposed increases to 7 percent in four of the six years.

Additionally, VeriSign could only raise their rates in two other years if VeriSign was able to show a need to do so to support the .com infrastructure and in specific support of the security or stability. Effectively, VeriSign can only raise the price of a .com registration by $1.86 before 2012 without providing justification.

Following extensive review and opportunity for additional public comment, on February 28, 2006, the ICANN board of directors by a nine to five vote weighed the favors involving the continued conflict with VeriSign and the lawsuits with VeriSign against the proposed terms and voted in favor of settlement.

Subsequently, ICANN submitted the .com registry agreement, the only part of the settlement process that the Department of Commerce is subject to review, and we await the result of the Department of Commerce's review. The agreements between ICANN

and VeriSign are likely to facilitate a more secure and stable .com registry and Internet.

In the long run a structure to support VeriSign's business and to encourage and provide incentives for VeriSign to invest in the stability and security of the .com registry is likely to be a much better choice than requiring them to cut cost for the benefit of a few parties.

In conclusion, Mr. Chairman, ICANN supports the small business community through its actions. Due to the Universal DNS resolvability secured and coordinated by ICANN, the Internet works in the same way for every user of the Internet. ICANN remains committed to the stewardship of a stable and globally interoperable Internet and is committed to fostering competition in the domain name marketplace. Through private agreements ICANN has acted to enhance competition in the registry and registrar industry without undermining ICANN's commitment to the overall stability and security of the Internet.

[Mr. Jeffrey's testimony may be found in the appendix.]

Chairman BARTLETT. Thank you very much.

Our third witness is the Honorable Richard White.

Rick, I generally try to avoid being introduced that way because almost nobody thinks Congress is honorable. When introduced that way, it just gives the audience another excuse to reflect on all the reasons they don't think Congress is honorable.

Mr. WHITE. We are used to it, though, aren't we, Mr. Chairman?

Chairman BARTLETT. Fortunately, the average citizen out there believes that their Congress, not any specific Congressman, is considerably more honorable than the institution. Interesting, isn't it? I am very pleased to welcome you back. Rick was representative of the 1st District of Washington from '95 to '98. While a member of Congress Rick founded and led the bipartisan Bicameral Internet Caucus and served as a member of the Energy and Commerce Committee.

During that time her led policy development for a wide variety of Internet related issues including the Department of Commerce's transition of Government management of the Internet to the private section. Currently Rick serves as a member of VeriSign's Internet Advisory Board.

Rick, welcome. The floor is yours.

## STATEMENT OF THE HONORABLE RICHARD WHITE, VERISIGN'S INTERNET ADVISORY BOARD

Mr. WHITE. Thank you very much, Mr. Chairman. It is great to be back and thanks for that nice welcome. Also nice to see Congresswoman Kelly, my classmate. I am glad to see you have lasted a little longer than I did. I hope you are enjoying it.

Let me say a couple words about this. I did submit a statement for the record and I hope you will have a chance to look at that. What I would really like to do is just focus on a couple things that I think is important to consider. After I left Congress I was CEO of a trade group for CEOs of technology companies. I just finished that up last year. Currently, as the Chairman said, an advisory group member for VeriSign.

I am not an employee of VeriSign. I am not a consultant for VeriSign so I can't really speak for the company. These are really my own opinions, although I have had the opportunity to observe their business so some of what I say here is kind of informed by what I've learned about being part of that group.

I want to just make sure the Committee understands the context where this came up because I thought Ms. Burr did a great job of explaining why we came up with ICANN in the first place. I was chairman of the Internet Caucus at the time and I very clearly remember the day that Ira Magaziner came over from the administration. He had this idea about a White Paper.

I think actually Mr. Horowitz might have been on my staff at the time. We went through and talked about how this ICANN thing would work, that it would be a good idea, and talked about. There have certainly been plenty of growing pains. I think in retrospect we might have done some things differently. We would probably all agree with that. At the time we all agreed it was important to get the international private Internet community involved and get the U.S. Government a little bit less involved. That was really the whole point.

So, as Mr. Jeffrey pointed out, what happened was they stood themselves up, they got a big chairman, and they readjusted a lot of things. They took VeriSign, or the company that became VeriSign, and took away some of their rights under the existing situation. No longer could they be in charge of the .org name.

They made them go through a rebid process for the .net name. Then I think it was in the year 2000 they signed this agreement that we talked about that would govern VeriSign's ability to administer the .com name which, of course, is the biggest one certainly in the United States and I think is by far the biggest overall.

What we are really talking about today, just so the Committee understands, is basically the renewal that happened in the last few months of the agreement that was done between ICANN and VeriSign in the year 2000. Really in a lot of ways it is a big nonevent. There aren't a lot of changes from what happened. It is still a six-year agreement like that one was. It will provides, as it did at that time, that if VeriSign fails to do a good job of administering this, they can be kicked out. You have to have somebody who is going to do a good job. On the other hand, if they do a pretty good job, there is the presumption that they will be renewed.

It also does provide for the ability to raise prices but it puts a cap on their ability to raise prices. It is basically, I think, $1.86 all told that they could raise prices which basically would mean that from the year 2000 when there was a $6.00 price, and that is what it still is today, to the year 2012, the price for a wholesale name in .com could go up from $6.00 to $7.86. It is a price increase but it is not a huge price increase I think given the span of time that we are talking about. I just want to make sure that the Committee understood that.

Let me give you a couple of other fact points that I think you ought to consider. From a small business perspective the Internet is an absolutely wonderful tool. Dan and I used to think about this a lot, but it gives them the ability to compete really on a pretty equal basis with a lot of big companies and that is a very good

thing. A small business owner typically takes the Internet for granted now just like the rest of us do.

It is the first place we go for information. It is the place where a small business owner can have e-commerce and do that sort of thing. They don't really care about how it works. They just want it to work. The reason they can feel that way and the reason we can all feel that way is that under this agreement that VeriSign had with ICANN for the last six years, there hasn't been a single minute of down time over that six-year period.

They have run it well enough so that unlike the telephone company which is what we use to call five nines of reliability, 99.999 percent. There has been 100 percent reliability of this network over this six-year period and I think there is every confidence that will continue over the next six-year period. I think that is a big reason why ICANN was so willing to make sure VeriSign got the job.

Let me make sure you understand something else. It is not because the job has gotten easier. I have some information here that just was absolutely amazing to me when I was reading it. VeriSign had 13 computers to run this system in the year 2000. It has 1,300 now to run the same portion of the system. It has servers that in the year 2000, I think, they had the number 60 and they have 4,000 today to do the same thing just to have the capability they need to have to make sure this is a secure network.

To put this in a little bit of perspective, you talked about your credit card transactions, Mr. Chairman. The number of transactions that VeriSign conducts in five days over this network is in excess of the number of credit card transactions in the world in a year. In five days they do more matching of numbers and routing of requests than you have credit card transactions in the whole world in a year. Another way to look at it, it is six times the daily number of phone calls in the United States. That is how many connections these computers have to make. Yet, they have done it without a flaw for six years. Not only that, just to make sure you understand, they do it while they are under attack.

You know, we take for granted this system works pretty well, but every day there are upwards of 1,000 attacks on the system, teenagers trying to bring it down, but also malevolent actors trying to bring it down who are very sophisticated. You have seen a number of examples of that. Just to summarize, they have done a good job. This contract is, if anything, very consistent with what was talked about before.

It has been negotiated under an arms-length agreement with ICANN which isn't really all that fond of VeriSign and vice versa so it is an arms-length agreement by private parties working pretty much the way Ms. Burr and I had anticipated at the time we set up this whole system.

My own view is that from a small business perspective, in particular, this will control any significant price increases. It will make sure this thing works great for the next six years. All in all it sounds like a great deal for small business to me so I would hardily recommend that the Committee take that approach. Thanks very much. I would be happy to answer questions.

[The Honorable Richard White's testimony may be found in the appendix.]

Chairman BARTLETT. Thank you very much. those of us who have had the opportunity to be both audience and speaker recognize that five minutes can be a very short time for the speaker and a very long time for the audience. Yet, if it is your question that is being answered by the speaker, five minutes may have end up a very short time which is why we ask the witnesses to summarize their statements because there is generally more than ample opportunity to expand during the question and answer period. What may seem like an interminable witness testimony ends up being a very short segment during the discussion.

Our next witness is Mr. W. G. Champion Mitchell. Mr. Mitchell is the Chairman and Chief Executive Officer of Network Solutions based in Herndon, VA. Network Solutions currently hosts millions of domain names and hundreds of thousands of e-mail boxes and websites for customers. In 1993 Network Solutions was awarded a grant from the National Science Foundation to develop the Internet's domain name registration surface. After developing the technology, Network Solutions became the first and only domain name registrar until 1999 when the domain name industry opened up to competition.

Mr. Mitchell, the floor is yours.

**STATEMENT OF W.G. CHAMPION MITCHELL, NETWORK SOLUTIONS LLC**

Mr. MITCHELL. Thank you, Mr. Chairman, and thank you for inviting me to be here, and thank the Committee for its interest in something that is so important, small businesses. I will certainly try to speak and rapidly as accent and cultural heritage allow me to.

I am not going to go into all the reasons the Internet is important to small business. I gather from the members themselves that is quite clear to them. I would say one thing, Mr. Chairman. We are here today because the U.S. Government is required to be involved in this contract. This is not solely a dispute between private parties. The Department of commerce is required to approve this contract so it is U.S. Government involvement to an extent, at least.

Far from making access to the Internet more reliable, more secure, and more affordable for small businesses, this proposed agreement between ICANN and VeriSign shocks the conscience and works against all of those things. We see two big problems from our standpoint with the contract as it stands. There are many people who see other problems but we have two big ones. The first one, and I hope Mr. White will forgive me, I will have to correct a significant factual inaccuracy in his testimony.

Under the perpetual monopoly provision of the proposed contract, VeriSign cannot lose it if they "don't do a good job." Under the current contract, the one that is about to be renewed, VeriSign can lose that contract if it is in material breech of a provision of the contract or if they ask for a price increase which they have. Then it is supposed to go to competitive bid. Under the new contract those provisions are removed. They can come in and ask for a price increase anytime they want to. There are only three small provisions which they could lose it over. Even then it has to go to arbi-

tration and then after arbitration they have 21 days to procure. There is no way they can lose it. It is perpetual monopoly.

No. 2, it has unreviewable price increases, unreviewable, unregulated, and unjustified price increases. The fact is that that the cost of technology has been going down. I am sure that Dell and Gateway would love to be here saying, "We haven't had a price increase in six years." Everybody else's prices are going down and it is not needed. It enriches VeriSign at the expense of American small business. $1.86 may not sound like much. That is $1.3 billion dollars in monopoly taxes over the period of the contract of which more than half will be paid by U.S. small businesses.

It is not a small thing. To put that in perspective, 700 million of monopoly profit to VeriSign from U.S. small businesses compares with an under $500 million SBA budget. If we had this and could use this money to fund small businesses to push them forward, I think it would be a lot better use of it than giving it to a monopolist.

It is allowed to hike its fees more than 30 percent in four of the six years. ICANN is not left out. ICANN gets a slice of that monopoly profit. They will get about $200 million in fees over that time of which about half of it will come out of the monopoly profit. The notion that VeriSign has put forward in the media and before this Committee that the Internet has to choose between continuing safety and stability on the one hand, and a perpetual monopoly with unregulated price raises on the other is simply a false dichotomy.

By the way, all of the examples that have been used in this Committee and in the testimony are ones which VeriSign has nothing to do with in defending the Internet. The Internet is vulnerable at many places. It is a largely fixed cost to defend the Internet so the more subscribers you have, the less it cost per subscriber to defend. In fact, VeriSign is going from 33 million .coms under management at the beginning of 2005 to 52 million plus this morning so that cost is going down, as well as the cost of your equipment and everything else.

Monopoly being granted in perpetuity is not necessary. A five or six-year term is plenty of time to make an investment and recover it. VeriSign has not said that the Internet is unstable and they only had a five-year or six-year term in the contract. They made plenty of investment.

By the way, you can have more money to protect the Internet if you are VeriSign. The contract allows it. It just says you have to come and cost justify it. In six years there has been no effort to cost justify an increase because there has been no cost to justify an increase.

Competition has clearly helped in the registrar business. John's testimony is absolutely right about that. Driven prices down as much as 80 percent. We haven't seen the same thing in the registry business except on rare occasions such as with the .net rebid last year where VeriSign because of the rebid had to make commitments to improve the security of .net and, at the same time, drop the price from $6.00 to $3.50. That is what competition does. It gets you better security and lower prices at the same time.

Let me be absolutely clear, and I am about to close down here, Mr. Chairman. Since I am a voice crying in the wilderness and a slow talker, just please bear with me for a minute more. I have no objection to VeriSign continuing to run the .com registry. That is not a problem. What I do have is an objection to it being done in a manner that gives a perpetual monopoly to a company with unregulated price increases at the cost of American business.

As my friend on my right, Mr. DelBianco, here is going to testify in his testimony, he says the greatest threat of all to the Internet security is the UN or foreign interest taking over. They are waiting for a cause. Last year in Tunisia everybody thought there would be a firestorm. They backed off.

As we say down south, they are hiding in the weeds and they are waiting for a cause. The cause is if I can, which was supposed to be set up to internationalize this with the approval of the Department of Commerce, gives a perpetual monopoly to an American monopolist, it is going to break lose and it is going to break lose this year in Athens. This does not have to be done. This contract is not up for renewal until November 2007. This September ICANN is supposed to undergo a review with the Department of Commerce to say what its policy is going to be in its relationship with these registries.

I would submit to you, Mr. Chairman, members of the Committee, that this is more than getting the cart before the horse. This is executing on a policy before there is a strategy. This is a classic example of ready, fire, aim. For those reasons, we would ask the members of the Committee to become active and involved to see that the policy is set before the execution happens, and to protect small business from a perpetual monopoly with unregulated price increases. Thank you very much, Mr. Chairman.

[Mr. Mitchell's testimony may be found in the appendix.]

Chairman BARTLETT. Thank you very much.

Our next witness is Mr. Steven DelBianco. Mr. DelBianco is the Chief Executive Director of NetChoice, a Washington, D.C. based coalition of trade associations, e-commerce businesses, and online consumers who share the goal of promoting convenience, choice, and commerce on the net. Mr. DelBianco.

**STATEMENT OF STEVEN DELBIANCO, NETCHOICE**

Mr. DELBIANCO. Thank you, Chairman Bartlett, and members of the Committee. I should also say that I appear before you today as a small business survivor. In 1984 I did start a small IT business and built it into a couple of hundred employees before selling it and then moved downtown here to Washington for, of all things, to start a trade association that helps small IT businesses.

NetChoice today is a vocal advocate against barriers to e-commerce. That is our battle cry. By barriers to e-commerce we mean a legacy, rules and regulations that are being used to inhibit commerce like regulations against online auctions, rules that would block the interstate shipment of wine, rules that would bury online sellers of caskets. These e-commerce barriers are brought to light for one reason, because the Internet works for small business.

The question you have asked today is does ICANN's new registry contract present a barrier to small businesses using the Internet?

It is a key question because as ICANN has developed this new agreement, they have declared they want to use it as the template for all subsequent registry contracts in the future. To get you answers, we went straight to the source. We sponsored a Zogby interactive poll last week of 1,200 small businesses that use the Internet across the nation. Here are some top lines from the poll.

Seventy-eight percent of small business owners say that a less reliable Internet would damage their business. No surprise. The same percentage said that reliability and performance were more important to them than lower fees for domain names. Two-thirds, 68 percent, supported $1.86 increase in domain name fees to keep the Internet reliable and secure and 81 percent said plain out they are just unconcerned with that kind of a fee increase period.

It is clear that small business is not worried about this fee increase. What are small businesses worried about other than security and stability? Our poll results show that small businesses are very concerned with abuses to the domain name system. Fifty-nine percent of small businesses reported last week they are concerned about cyber squatting. Cyber squatting is where a speculator buys and holds a domain name that is very closely related to the domain name of another legitimate business and then holds that name ransom. Sixty-nine percent said they were concerned about being exploited when their domain name is allowed to expire which is just another form of extortion which is that they have to pay an exhorbinate fee to reinstate an expired domain. A few weeks ago I bought DelBiancofamily.us from a registrar GoDaddy. They are a very affordable registrar. They charged only $8 for a one-year registration. But the fine print tells me right up front that if I allow it to expire inadvertently and then ask them to renew it for me, to reinstate it for me, they would charge me $80, ten times what I had to pay to get it. That doesn't seem right, not to small businesses nor to consumers.

We also know that small business is very concerned about something called parking. This is where a deceptive website preys on the fact that human beings make errors when we type in domain names. A simple typo takes you to a site you didn't intend to go at. Parking sites generate ad revenue by steering the users who inadvertently landed there to competing businesses.

Pool.com, for instance, has made a science out of this parking. They snatch expiring domain names everyday at 2:00 in the afternoon. Pool's president says, and I quote, "It's like going to the horse races every day." A fourth type of domain name abuse that we are concerned about is something called slamming. That is where a registrar other than the one that you originally used to buy your name sends a fraudulent invoice to you months ahead of your expiration telling you here is what it is going to cost to renew.

If you fall for it and pay the bill, the slammer has taken over your domain account. Fortunately, our Federal Trade Commission stepped in and forced several registrars to stop slamming users in 2003. So knowing these real concerns of small business, let's turn to ICANN's new registry contract for a moment. I think it is comforting to see that ICANN gets it about what really are barriers to small business.

Three quick points. No. 1, security and stability is absolutely baked-in to their contract. Those words are mentioned 26 times in the 28-page agreement, not counting the appendices. No. 2, the contract states right up front that ICANN fully intends in the years ahead to resolve domain name disputes and stop some of these abuses that small business is concerned about.

In fact, Section 3 of the contract, and it is a tough contract to read, says that the registry operator must implement any and all brand new policies that ICANN adopts over the life of the contract. If they fail to implement and fail to cure, they lose the renewal option. They lose the renewal option. It is plainly in the contract.

Now, if a registry operator can meet unlimited upside obligations under a price cap over the term of a contract, I think you would agree they deserve a presumption of renewal. Third point I will address is that ICANN is seeking independence in this contract. Independence, as Champ said, from the United Nations and from other governments.

The Government and the UN know how important and vital the Internet has become and anything that is that important, well, they want to control it. They will use any excuse to come out of the weeds. They are waiting for a cause, as Champ indicated. I would tell the members of this Committee that this group is looking for any excuse at all. They will take as an excuse the approval of this agreement and you can bet they would take as an excuse if this group or this Government intervened in some way to mess with the contract. If this agreement between ICANN and any registry is changed by our Department of Commerce in any way, foreign governments say, "You see, the U.S. won't keep its hands off the Internet." We lose either way.

I also wanted to suggest that independence has another motive. The current contract that ICANN is proposing calls for a larger and more predictable revenue stream from the registry operator as opposed to the registrars. That is a move towards independence that really could be concerning to the large registrars who have a lot of control today.

Last December I was in Vancouver and heard ICANN's finance chair say that spending on critical initiatives was being delayed and diminished because the biggest registrars hadn't approved the fees that were already in the adopted budget. Resalers of domain names cannot be allowed to control ICANN that way.

So, to conclude, I would say that our poll shows plainly that ICANN's new registry contract does address the real concerns of small business and should be approved. These real concerns, however, do not match the complaints of a few large registrars who have their own ax to grind. Too often the booming voice of a bigger business will drown out the voices of small business.

I close by thanking you for listening to small business and I look forward to your questions.

[Mr. DelBianco's testimony may be found in the appendix.]

Chairman BARTLETT. Thank you very much. Our next witness, and our last witness, is Mr. Craig Goren who is the Chief Executive Officer of Clarity Consulting. When I read the name of your organization, I thought what a creative name. It is one of those

several times when I see a name that I ask myself, "Gee, why didn't you think of that?"

Another one of those names was Serendipity, Inc. What a great name for a company. Thank you, sir, for being so clever as to choose a name like Clarity Consulting. What other consulting firm would you want to go to? A Chicago based software development firm. Thank you and the floor is yours.

**STATEMENT OF CRAIG GOREN, CLARITY CONSULTING**

Mr. GOREN. Thank you. Ironically before I start with my notes, that domain name was available but a company that was selling domain names wanted about $25,000 for it at the time which we couldn't afford. That's one of the reasons why I am here actually.

Mr. Chairman, thank you for inviting me to testify here today on the subject of Contracting the Internet: Does ICANN Create a Barrier to Small Business? I am the Chief Executive Officer of Clarity Consulting. We are a Chicago based software development consulting firm that specializes in building custom software solutions for clients that depend on the Internet from small innovative start-up firms to Fortune 50 financial service firms.

Additionally, I'm the co-founded of CenterPost, a small business that relies on the Internet to provide automated customer messaging solutions such as flight status alerts, appointment confirmations, and late payment reminders for clients like United Airlines, Wells Fargo, the Weather Channel, and so on and so forth.

The Internet has become as essential as the phone, fax, and overnight delivery for all businesses both small and large purchasing products online, websites, e-mail, ATM machines. Thousands of other everyday business scenarios rely now on the Internet. Name resolution, the issue here today, is a technical term for the service provided by the registries, resold to companies like mine by the registrars, and it is ultimately what puts my name on the Internet.

If there is a problem with DNS resolution, my business and, therefore, everyone else's business essentially becomes invisible. When DNS service goes down, all of the critical infrastructure that supports the kind of services I just articulated go down as well. Just as business dependency on the Internet exist today, and on DNS exist today, and it has grown over the past several years, it will similarly continue to grow as new and new ways of using the Internet in business scenarios arise.

I couldn't have predicted blogging 10 years ago or iTunes or anything else but all of those kinds of services, as well as the negative services like denial services attacks and that sort of things, continue to tax the Internet. I just heard some testimony comparing the lowering of cost. I do agree there are economies of scale that need to be taken into consideration when we are talking about services like this. On the other hand, pulling price in the other direction should be consideration as to what kinds of new things are taxing the existing system.

In terms of small businesses, however, let me state this up front and very clearly. My business, my client's businesses, and even my competitor's businesses now absolutely depend on a secure stable internet to provide products and services. Whatever the cost, business must be able to count on a network simply working. For my

clients network up time must be so close to 100 percent the difference is undetectable. If it isn't, planes are missed, checks bounce, e-mails are lost or millions of dollars are lost per minute in financial transactions.

Mr. Chairman, your hearing today asks questions about the barriers to small business but the biggest barrier we fear is our reliance on the Internet infrastructure working properly and small businesses who can least afford to invest in redundancies and safeguards around the risk of DNS failure are most substantially exposed by the reliance on DNS and the Internet.

It is my understanding that ICANN is including a provision for possible $1.86 wholesale cost a year increase to the registrars from their cost today of $6.00 a year in order to reinforce the infrastructure and enhance security as the Internet morphs over the coming years. Most small businesses pay about $10 to $50 a year to register their domain name.

Even if the registrar elects to pass that $2.00 cost along to me, it is pretty much inconsequential in terms of the big picture for a small business in the overall cost in providing those services on the Internet. I would be happy to pay an additional $2.00 a year to guarantee equal or better service than what I have experienced over the past seven years, for example.

In terms of the contract itself I want to take a moment to speak about what I consider the ridiculously deceptive and perverse misuse of the term perpetual monopoly. This is simply an contract with the potential for renewal. If we allow this absurd definition to stand, every service provider is a monopolist regardless of industry or size.

By that definition every single vendor contract linked to renewal where some kind of service level agreement creates a monopoly and, therefore, my 50 percent firm based in Chicago is a monopoly and I am a monopolist. I don't think anyone would agree with that. Such contracts in my opinion are ideal and I think most businesses large and small would support it. They are win/win/win. Buyer, vendor, and consumers all benefit.

As a small business consumer I want my registrar's registry, VeriSign in this case. I want their stockholders counting on keeping me happy and I want them scared out of their mind that if they screw up they lose all that forecasted revenue.

On behalf of small businesses everywhere, my business, my employees, my customers, I urge you to make certain that the interest of all businesses are protected, not just the narrow group of players and competitors who may be seeking Government assistance for the competitive advantage of themselves. Any decision I and our Department of Commerce makes should take into account the need to preserve stability and security of the Internet ahead of everything else.

The consequences of a registry service disruption are enormous. I can speculate on a lot of reasons, big money reasons, why certain companies might not like disagreement but it is not my position to do so. My testimony is to clarify one thing, the absurd notion that $2.00 a year over the next seven years for the price of my domain name is something that should play into part of whether or not to let this contract go further.

[Mr. Goren's testimony may be found in the appendix.]

Chairman BARTLETT. Thank you all very much for your testimony. Because you do not all have the same perspective on this issue, because you are very much more knowledgeable collectively than we are, I would like to ask you to pay individual particular attention to the questions that are asked and the discussion that occurs.

If at the end of this hearing we have not had the wit to ask important questions that you would have asked were you sitting here, we would ask you to please convey those questions to us and we will ask all of you to be ready to answer questions for the record because we want to make sure that this hearing provides as complete testimony as possible.

With that, let me now turn to my friend Mrs. Kelly for her questions and comments.

Ms. KELLY. Thank you, Mr. Chairman. I am glad to be here and to hear this discussion. It is kind of a complicated thing and it is not something that is generally understood by the American public. They are certainly not going to spend the time reading all in depth in the newspapers about it so I think a hearing like this is very important.

I have a couple of concerns. It seems to me that none of you are arguing against VeriSign serving as a .com registry. You are asking that VeriSign be able to compete at a reasonable interval for that privileged market position that it has. Is that correct?

Mr. MITCHELL. Yes, ma'am. That is correct.

Mr. WHITE. Not quite.

Ms. KELLY. Is there something unreasonable about this? Rick, my colleague from the class that we came in together with, go ahead and answer that with Mr. Mitchell. I would like to hear a dialogue between the two of you so I can understand this more completely.

Mr. WHITE. Yes. Absolutely. You know, I think you remember, Congresswoman, you and I came in at a time when competition is something we absolutely believe in. There is nobody, I don't think, who voted probably more than either one of us for competitive things when I was here and I think you are still probably still upholding that great tradition. But, you know, there are certain industries where—well, to start off with, what you have here is an arms-length contract between two private parties that don't really like each other so it is hard to imagine there is too much collusion in that. We set it up exactly for that reason.

Ms. KELLY. One second. Mr. Mitchell just shook his head, no, that is not true. I want to hear a dialogue. Go ahead and talk not to me but talk to each other because I would like to hear what you have to say to each other.

Mr. MITCHELL. It's not an arms-length contract between two independent parties. What you had was the regulator and the regulated getting into a room with the door closed without anybody being aware that it was happening and agree to essentially a perpetual renewal provision that gave a perpetual monopoly, and they are a monopoly. I mean, they are the only people you can get it from.

That is the difference between them and the man from Clarity. He has thousands and we have got hundreds. Neither one of us are monopolies. They got into the room, they closed the door, and they made an agreement and here was the agreement. VeriSign gets a perpetual monopoly. Verisign gets a price increase without have had it reviewed or justified. ICANN gets $80 million of additional fees and gets removed from any review.

Now, it is not true that the registrars have the right to approve the ICANN budget. They have no ability to say anything about approving the ICANN budget. What they do do is have a right to vote on the particular fees that they pay. It is only part of the ICANN budget but it is the only review that exist.

I would be the first to agree that is not the best way to do it, that we should have reform of the way the ICANN budget gets reviewed. That is what should be happening this September with the MOU review and should be decided before we ever prematurely renew a contract that doesn't come up for renewal until November of 2007.

Ms. KELLY. Your position is that there should be stronger oversight?

Mr. MITCHELL. I think in certain areas, yes, ma'am, there should be. In other places competition will take care of it. We don't have to worry about pricing because we compete with 687 other registrars.

Mr. WHITE. We would all like the Government to help us lower our wholesale cost. I mean, that is essentially what we are asking here. The fact is he didn't disagree. These are private parties. Yes, there is a relationship that one is supposed to quasi-regulate the other but that doesn't make this anything different from an arms-length negotiation between two private parties.

I would also say every registry is a monopoly for their particular name. If it is .com or .us or .mobi, you have got to have one as a technical matter. You have got to have somebody who is the final answer. How do you track it down? Somebody has got to have the computer that has that question in there. The idea that this is a monopoly situation is totally off in left field.

To say one other thing, we also do have some businesses and we recognize them where it doesn't make sense to have two dams built across the river so we can compete. It doesn't make sense to sell Spectrum for cell phones to two different people and have them try to build out the same area. In areas where you have a huge investment that you have to make, hundreds of millions of dollars in this case, you have got to recognize the desire of the person making that investment to have a reasonable period of time and this is now different in those situations.

Mr. MITCHELL. I would agree with certain things that he says and I want to be clear where we do agree because I think that is just as important, Congresswoman, as where we disagree. I agree that it is best to have one registry for a gTLD and I agree they have to have a reasonable period of time to recoup investment. I am a businessman. Five years is more than reasonable. We give the key to the commanding control of the United States military out on a contract that is bid to private parties just the way we are

talking about this should be bid for terms of about five years. That is plenty.

Last point, VeriSign most definitely is a monopoly. It is true that not every generic TLD is a monopoly. .name, I think, probably has 6,000 total. They don't have a monopoly. Who wants it? On the other hand, you have .com that has 78 percent of the market share in the United States. By anybody's definition that is a monopoly. There is no substitute for .com.

Ms. KELLY. So it is a check and balance system right now and that is what this Government is supposed to do. I am sitting here thinking that it sounds like we need—Mr. Chairman, I think we need to take a look at what is going on here in terms of that check and balance system.

The other thing is having been a businesswoman before I got here, it seems to me when you are talking about increased price, and you are allowed to do that at VeriSign, I don't know that is going to produce any better safety or security for anybody who is paying that additional cost. I haven't heard anything today that tells me that is going to be the product of the increase. If your costs are going down, why are you increasing the cost to people?

Mr. WHITE. Let me help you with that one. I think you make two really good points. To deal with your first point—I'm sorry, I just missed the point I was going to make. Oh, I know. I wanted to say that ICANN was set up, Congresswoman Kelly, to do exactly what you are talking about. There is supposed to be oversight but it is supposed to be done by ICANN, experts in the field, a private self-regulatory organization.

It is not supposed to be done by members of Congress. I would ask why in the world would this Committee get involved in this? I mean, you have a arms-lengthy deal between these private parties just exactly the way it is supposed to work. You have 100 percent performance by this company. Talk about international concern. If anything is going to get the international community upset, it is when you overrule the decision made by the body set up to support their interest.

I guess I would suggest to you that this is not a place where oversight by this committee as called for because you have already gone through the process that was required that actually this Congress and this Government set up almost 10 years ago.

Ms. KELLY. I will do anything to support small business. That is my point. I appreciate you giving me a little extra time here, Mr. Chairman, but this is really serious for the small business person. If they are going to pay more money, they ought to be getting something more for their money.

Mr. DELBIANCO. Congresswoman, may I react to that, please? I did take some time to examine the process that ICANN was going through at soliciting input on this proposed contract. It is far from being in a smoke filled room because whatever happened behind a closed door, everything was shown to the full public of the world and you wouldn't believe the number of comments that showed up on these world wide database, world wide bulletin boards and commentary. All of us can download and print the entire agreement, every bit of it. None of this is closed. What amazes me most of all in the agreement is that VeriSign or any other registry operator is

willing to sign on to a limited price cap, whatever it is. I told you it is $1.86. We don't really care in small business. As a small business I would be scared to death to sign an agreement that obligated me to any and all new policies that ICANN comes up with. Any and all new policies for security and stability, any and all new policies to resolve disputes bout domain names and squatting and renewal.

In other words, ICANN is promising to invent new policies as problems occur to be reactive and I am glad but they are putting folks on the hook for a fixed price to deliver anything and everything it takes to make ICANN happy. that strikes me that ICANN is getting a contract here that is good for us that use the Internet but awfully tough for a registry operator. That is why the price increase, I believe, whatever it is, is justified.

Mr. MITCHELL. If I may respond to that, again, the statement of facts are inaccurate. VeriSign is allowed to get a price increase anytime it wants to if regulation increases its cost. There is no cap on that. If they come to ICANN and say, "Your new regulations have increased our cost and here it is," they get a price increase.

This contract, the proposed contract, the existing contract, all provide for that. I think any American small business would dearly love to have a guaranteed price increase and they didn't have to compete with anybody. Perhaps the ultimate test of a monopolist is when you can call all of your customers greedy, price harlots, and know they have to come to you tomorrow and buy at whatever price you charge. I think that is better than the Herfindahl index test for monopoly. Thank you, ma'am.

Ms. BURR. If I could just at the risk of being heretical suggest that this debate about perpetual renewal is a total sideshow. I think almost everybody at the table would say that it is okay with them for VeriSign to continue to run .com. Frankly, for other registries who are coming and hoping to compete with .com, the security and the ability to raise money and investment that comes with having a perpetual presumption of renewal is critical.

The real issue here is every registry is a monopoly for that registry, and there is no question that VeriSign and .com has a dominant position in the domain name registration world. The real question ought to be is VeriSign in a position to misuse its dominant position and, if so, are the kinds of checks and balances that we have in place by law adequate? Does the Justice Department have ability to get at this and look at it?

If you want to give ICANN the job of being the substitute Justice Department, do they have the ability and the legitimacy to be that? I think there is a very important question about what are the checks and balances on VeriSign's ability to misuse its market position but I hate to get sort of completely side derailed by this perpetual renewal issue.

Mr. WHITE. I agree. There are many other issues and these are all to be taken up. If you would look at the notice that Commerce has put out on the renewal of the memorandum of understanding, these are all to be taken up as part of that process.

My key point is let's give the answer to the policy issue so that it can do what it is supposed to do which is embody those in the contract and a contract that doesn't come up for renewal until No-

vember of 2007. The memorandum of understanding has to be completed by September 2006 so you have 14 between the two.

Chairman BARTLETT. Before turning to our next member for questions, let me ask for a clarification. I seem to be hearing two things about the $1.86. One was that it was permissible price increase during the performance period up to 2012. The other was that it was a per year increase. Which is correct?

Mr. MITCHELL. It is 7 percent per year, Mr. Chairman, which is a total of $1.86. The first year is 42 cents.

Chairman BARTLETT. Okay. So it was $1.86 over the performance period, not per year. I seem to be hearing two things.

Mr. MITCHELL. They are both correct. One, it is a total price increase of $1.86.

Chairman BARTLETT. But not $1.86 per year.

Mr. MITCHELL. Yes, it is $1.86 per year of registration so that if I go and register a domain name, which many of our customers do for three years, then you would pay three times a $1.86.

Mr. WHITE. It is a yearly fee. It is a yearly fee.

Mr. JEFFREY. As a point of clarification, 7 percent per year is available to VeriSign to increase prices if they deem it necessary. They have indicated they may not choose to use that 7 percent increase that is available. That is one thing. That is four of the six years and that is now it goes to $1.86. The other two years they can present a 7 percent increase but only if justified by security and stability infrastructure changes or requirements.

Chairman BARTLETT. So it is $1.86 or 7 percent, whichever is greater, up to the $1.86 after which you have to justify it.

Mr. MITCHELL. Yes, sir.

Chairman BARTLETT. Okay. That is a fair statement. Thank you very much.

Ms. Musgrave.

Ms. MUSGRAVE. Thank you, Mr. Chairman.

Mr. Goren, you indicated a level of comfort with the rate increase and you don't see anything unfair about it. Probably one of the reason that you are all here today is because some small businesses are not happy with it. Could you maybe give me some insight? You are comfortable. Why are other small businesses complaining?

Mr. GOREN. I have not heard of a single small business complaining.

Ms. MUSGRAVE. Not a single one?

Mr. GOREN. Not a single small business. I have run this by many colleagues. There is a complicated business relationship that exist here along with the technology. It is kind of difficult when I talk to friends and colleagues to explain sort of in layman's terms but the nomenclature of registry versus registrant and that sort of thing confuses people. This is the wholesale fee that we are talking about.

I have the sort of distinct advantage of naiveness because I don't know what is going on behind the scenes. I just have my view as a small business and my client's viewpoint. I have no knowledge of what they pay wholesale prior to me doing a little bit of research before appearing here today. Typically of the people that I have informally surveyed, small business pays about anywhere from $10

to $50 a year for their domain name services fees from registrant along with some other fees.

We are talking about the likes of Register.com, GoDaddy, Network Solutions, that sort of thing. When I buy the services and I select my vendor, I have no notion of their underlying cost structure nor frankly do I care. I don't make my purchasing decision based upon that.

As an aside, to prove that point, if you go to, say, Register.com to purchase your domain name or GoDaddy or that sort of thing, you will find that regardless of which kind of domain name you intend to purchase, and I learned, by the way, that they have underlying different cost structures, the price of the consumer, me, the small business, happens to be priced the same within each registrant, or about the same. I think it is about $8 to $10 a year for GoDaddy. It is about $35 a year for Register.com.

Clearly from my perspective whether it goes up—whether that $1.86 a year gets passed along to me or not compared to all of the other issues that I have with my registrants and the DNS issue resolution and mail servers going down, if I give up the latte I bought this morning in order to ensure that reliability remains the same, I would do it in a heartbeat.

Mr. DELBIANCO. Congresswoman, I do have an example of a small business. It was during the debate, during that public and very transparent debate that ICANN was conducting and a small business objected to the whole idea of the price increase. It was a woman who wrote an e-mail. It is still on the website at ICANN.

She objected to how much these fees would impact the ability for her to buy her websites that she uses. It was a pretty emotional appeal because her website, she said, was a nonprofit called Catholicpenpals.com. I was too curious to resist so I went to the website and her website said, "This domain name is for sale." There were no pen pals there.

If you want to find small businesses that object to even a minuscule price increase, pay attention to the small businesses who make their living squatting and parking and snatching domain names with an effort to catch people unawares, put ads in front of them and earn revenue or, worse still, to extort people into paying exorbitant sums to buy a domain name that is misleading to their consumers and truly belongs to them.

Mr. MITCHELL. And I abhor all those practices. I think any responsible person does. There are small businesses that are very cost sensitive and I will give you a specific example and it doesn't have to do with this $2.00 price but it will give you some sense of what real small businesses feel.

About six weeks ago a young man called me from upstate New York. His domain was on automatic renewal with us. When we have that we charge his credit card 45 days before the renewal date so in case he just forgot to take it off, he can do a charge back and we won't have renewed the name. Neither of us can get penalized.

He called me virtually in tears because we had done that renewal 45 days ahead of when he planned it. He runs his cash so tight every month to try to keep his business alive that we had ac-

tually pushed him up to the limit of his credit card and he was having to bounce a payment. We, of course, reversed it.

We wrote the people. There are people out there who care. I will agree that most people like Mr. Goren aren't going to care that much about $2.00. I don't think you are buying anymore stability or reliability with it, by the way. I think you are just putting money into somebody's pocket. If we are going to put it in somebody's pocket, let us take what American small business pays which is over $700 million under this proposal and put it somewhere that it can be used to increase the competitiveness of American small business, not to a monopolist pocketbook.

Mr. WHITE. Mr. Mitchell.

Mr. GOREN. Let me speak to that for a second, please. So you charged this person that was practically in tears $45 for a service essentially that wholesale you payed $6.00 for.

Mr. MITCHELL. No, I didn't charge him $45.

Mr. GOREN. You were going to and it put him in a cash flow issue.

Mr. MITCHELL. You are wrong.

Mr. GOREN. What did you charge him?

Mr. MITCHELL. I said 45 days.

Mr. GOREN. What did you charge him?

Ms. MUSGRAVE. Probably for us to understand this, let's go one at a time. How about it, guys?

Mr. GOREN. Let's say you charged him the cheapest I have seen, $10, and he had a problem with that on his credit card. Under the example, and this is why the details are important, not at a macro level but at an individual small business viewpoint level, that same person, I think, would have objected to $12.00 just as much as $10 in that scenario. It is not the cost of that service to that person that is driving whether or not they want that domain name. It is not that cost. It is simply not that cost. If that person has a problem being charged 45 days ahead of time, it is pretty misleading—because of their credit care issues, it is misleading to suggest that a $2.00 increase would have made it even worse.

Mr. MITCHELL. I didn't mean to suggest that. I said this was not appropo specifically to the $2.00—

Mr. GOREN. If it is not appropo—

Mr. MITCHELL. —but to how tight some small businesses run. Let me say something—

Mr. GOREN. No one runs their domain as tight as $2.00.

Mr. MITCHELL. Let me say something specifically to what Mr. DelBianco said. He talked about the comments and the open and transparent nature of the comments. After the deal was cut they put it out for comment. That is quite true. Here is the interesting part. Every constituency of ICANN that spoke other than the one that VeriSign is a member of spoke vociferously against this. VeriSign's own constituency, the registry constituency, didn't come out for it. What they said is, "If they are going to get that deal, we want it too." Yet, with complete opposition ICANN went forward. That is how much good transparency has been in this particular exercise.

Mr. WHITE. Just so we do find out, how much did you charge this person for the domain name?

Mr. MITCHELL. I think we charged the person $35.00.

Mr. WHITE. $35.

Mr. GOREN. So it would have been $37.00 if you—

Ms. MUSGRAVE. Thank you, Mr. Chairman.

Chairman BARTLETT. Thank you very much. As Chairman I have stood aside because this is exactly the kind of hearing I like. I have known ever since I came here that the great wisdom of this country was not inside the beltway but outside the beltway so thank you very much for making this a very interesting and informative hearing.

Before I yield again to my colleagues for a possible second round of questioning, I would like to go down the list of witnesses. It was my anticipation that the primary purpose of this hearing was to get information on the record because there are a lot of people out there who had some questions about exactly what was going on.

If, in fact, there was something that we as a Committee ought to be doing, I would just like to go down the list starting with our first witness and go on down if, in fact, there is something we as a Committee ought to be doing other than just having this kind of a hearing that gets the information out on the record so it is available to people. If there is something specific we ought to be doing, now is the time to tell us what that is. Let's just start down and go down the list.

Ms. BURR. I think that getting the information out and on the record is an important task.

Chairman BARTLETT. Thank you. Okay.

Mr. Jeffrey.

Mr. JEFFREY. We agree. We applaud you for having the hearing. We are not hiding the information about this agreement. There have been two public comment periods and we certainly think that this hearing is a good thing because we want people to understand what the agreement is about.

Chairman BARTLETT. Okay.

Mr. White.

Mr. WHITE. I think this hearing has been fine. I wouldn't do anything else. I think you are treading on dangerous territory if you do.

Chairman BARTLETT. Mr. Mitchell.

Mr. MITCHELL. Well, I think I will put aside whatever it is they told me I was supposed to say and just talk to you all. I am sure that somebody will chide me afterwards. First, Mr. Chairman, thank you. Thank you, Congresswoman Kelly for your time and your patience with us. You have been very kind.

Yes, there is something the Committee should do, I believe. We believe a couple of things. No. 1, that the Committee should reach its own decision on whether this is good, bad, or indifferent for small business and tell the Department of Commerce what it thinks whatever your decision is. And second, if you want me to, I will tell you what I think it should be, but otherwise I will leave it to you, Mr. Chairman.

The second thing would be, and I think this is vitally important, we have heard today many issues come out about how the Internet is governed, how ICANN is run, and they are very important, and there are legitimate arguments on both sides.

These are all going to be aired between now and September of this year in the memorandum of understanding review. Those should be settled before anybody tries for a new registry agreement that is not due until November 2007. I would urge the Committee to so say to the Department of Commerce. Thank you, Mr. Chairman, so much for letting me be here.

Chairman BARTLETT. Thank you very much. Mr. Mitchell has volunteered that he would make a judicial statement for the record. We will hold the record open so that all of you can do that. We want this to be a full and complete a hearing as possible and encourage you if there is something that could be amplified on to please make that available to us. The last two, Mr. DelBianco.

Mr. DELBIANCO. Thank you, Mr. Chairman. What I will do right away is we just finished the analysis of the poll we did on 1,200 American small businesses that have websites. Those are the results I quoted in my testimony and I will just put that into the record and make it available to anyone else here who would like to have it.

Mr. MITCHELL. May we be allowed to review it and comment on it in the record?

Mr. DELBIANCO. Of course.

Mr. MITCHELL. Okay.

Mr. DELBIANCO. I think the record stays open. I did want to suggest this. The Government needs to act with caution that intervening at what ICANN is trying to do in its private contracts. As Mr. Mitchell said, the UN and other governments are hiding in the grass and they will look for any excuse to pounce on ICANN for lacking the independence it needs so we need to be cautious about messing with what ICANN has set up. Thank you, Mr. Chairman.

Chairman BARTLETT. Thank you.

Mr. Goren.

Mr. GOREN. I guess what I would like to see done is really what I would like to see not done and that is I would like to see small businesses represented properly and I don't believe that $2.00 a year for a domain name is something that small businesses really care about. On the other hand, I am very concerned that people and parties with other specific big money interest in economies of skill in terms of tens of thousands of domains use small businesses to misrepresent their interest in terms of gaining other types of advantages that would come at the expense of small businesses like stability and all the other complex things that are going to happen with the Internet should we decide to change registries and the Government may not be exactly aware of all the kinds of technical issues and trouble and additional buried cost that would come along with such a thing.

Chairman BARTLETT. Thank you very much.

Mrs. Kelly, you have additional comments and questions?

Ms. KELLY. I just would ask unanimous consent that this dialogue that has been proposed be allowed to be in the record and hope you will so move. That is the first thing. So moved?

Chairman BARTLETT. I don't think we have to move. I think I saw the clerk taking it down and I don't think we have any option but that it is part of the office record. Am I correct? Thank you.

Ms. KELLY. But it will be coming back to the Committee. I think you are right, Mr. Goren, in the fact that $2.00 isn't really that big a deal for the average person. What is important that there be somebody watching to make sure we don't foul up somewhere in the way this is being handled. That is the overriding. I think that is what Mrs. Burr was talking about. It is important if it is not broken, we are not going to need to fix it.

I know from having been in this position for a little while that the best way to make sure it doesn't get broken is to keep a good handle on the oversight. That is really where we are coming from, I think, to make sure that nothing is going to harm our ability for the Internet to grow and to grow our economic base by letting our small businesses get in and get active. Is that a correct statement and would you agree with that?

Mr. GOREN. I would agree with that, Congresswoman. The point that I was trying to make to clarify that is that the only argument I have actually heard brought up in what I thought was an oversight process that has been going on both privately and publicly, the only concern that was brought up, and particularly with this Committee, the House Committee on Small Business, was the cost issue. If that is the only concern, then I can't see anything else. As a small business owner who started two small businesses, I would be happy to comment on other potential issues but the only issue I have heard on the table is this $2.00 a year.

Ms. KELLY. I have started a couple of my own small businesses and run them, too, so I understand that there are things out there. In general I feel very strongly that we in Government can do the best job by not getting involved in things that are working. On the other hand, I also know that when you talk about an increase in cost, if my costs increase, I have to pass those on to the customer.

If my costs increase, I want something for my money. I didn't hear anything here that said I am going to get more safety or higher quality for an increase in cost. I would be very interested, Mr. White, my friend, if you would answer more specifically if you would like to add to what you are saying to address that in particular.

Mr. WHITE. Absolutely. I will because I tried to make the point but we will try to send you some additional information. The challenge of running this is orders of magnitude greater even than the increase in traffic because people like Mr. Mitchell have gotten very sophisticated at using the system to maximum the revenue they can get which is what they should be doing but it puts a lot more demands on the registries—

Mr. MITCHELL. I—

Mr. WHITE. Mr. Mitchell, you have had a lot of opportunities to talk. Would you mind if I said something?

Mr. MITCHELL. Well, you just kind of cast—

Ms. KELLY. One second, Mr. Mitchell. Let him finish.

Mr. WHITE. I just wanted to say that it has become a lot more difficult and they have done a great job and they are going to have to continue to invest to make sure that it stays at the level of performance that we've had. That is something that we shouldn't underestimate. We will make sure we get you all that information so that becomes clear.

Ms. KELLY. Thank you.

Thank you very much, Mr. Chairman, for doing a second round.

Chairman BARTLETT. Thank you.

Mr. Mitchell, you had a comment or observation?

Mr. MITCHELL. Yes. Mr. Chairman, thank you. These little asides about how we are profitable and we are the big business are getting just a tad old.

Mr. WHITE. You should be in my seat then.

Mr. MITCHELL. There are things that are done on the Internet, one of them that Mr. White mentioned, the ad game that goes on. We don't participate in that. So people ought to be a little bit careful about throwing aspersions at folks. As for who has gotten the big money here, I wish I had VeriSign's revenue and VeriSign's size or VeriSign's profits. I think we need to follow the money, too.

Thank you, Mr. Chairman.

Chairman BARTLETT. Thank you.

Ms. Musgrave, do you have additional questions or comments?

Mr. MITCHELL. No, thank you.

Chairman BARTLETT. Okay. I want to thank you all very much for a very good hearing. We will hold the record open for two weeks and we really hope that you will contribute additional observations to the record. Thank you all very much for a good hearing and we stand in adjournment.

Mr. MITCHELL. Thank you, Mr. Chairman, and thank you members.

[Whereupon, at 3:34 p.m. the Committee adjourned.]

Committee on Small Business
Hearing - *Contracting the Internet: Does ICANN Create a Barrier to Small Business?*
Room 2360, Rayburn House Office Building
June 7, 2006 at 2:00 PM

Opening Statement of Chairman Manzullo

Good afternoon and welcome to today's hearing. I want to thank the panelists for joining us today, especially those who have traveled across the country. The purpose of this hearing is to review the proposed settlement of private litigation between the International Corporation for Assigned Names and Numbers (ICANN) and VeriSign. The settlement is full of minutiae that few know in detail.

If you have read the newspaper over the past few days you may believe this agreement will shake the very foundations of the Internet, potentially causing another country to attempt to start their own separate and conflicting version of the Internet, sowing confusion across the world, and possibly breaking down the ever-growing international marketplace that is the Internet.

This hearing is about a settlement of private litigation. Normally this is not something in which Congress involves itself, but this case is subject to review by the Department of Commerce's National Telecommunication and Information Administration (NTIA) prior to its final disposition. Thus, there is a need for Congress to be aware of the United States government's involvement. To do so properly Congress needs to know some basic facts:

1) What exactly is meant by "Advise and Consent" within the Department's 1998 Memorandum of Understanding signed with ICANN?

2) What exact portion of the private settlement is under review by the NTIA?

3) What advice can NTIA give regarding the contract? Are there limits? If so, what are they?

Other interested parties have concerns regarding two key points within the settlement: the right of "presumptive renewal" and VeriSign's ability to raise rates in four out of the next six years. It seems the underlying question of this entire discussion is determining the proper balance between stability and free market competition.

I look forward to hearing the panel's testimony on this complex issue. I now yield for an opening statement from the gentlelady from New York, Ms. Velázquez.

**Testimony of J. Beckwith Burr**
**Wilmer Cutler Pickering Hale and Dorr LLP**
**House Small Business Committee**
**Wednesday, June 7, 2006**

Mr. Chairman, and Members of the Committee:

It is a pleasure to appear before you to provide some background on the origins and purpose of the Department of Commerce approval provisions in the Registry Agreement between ICANN and Verisign. Prior to returning to private practice in October of 2000, I was an Associate Administrator of NTIA and director of its Office of International Affairs. I do not represent Network Solutions or any members of the registrar community. Neither do I represent Verisign, though most of my ICANN-related work in the past five years has been for members - and prospective members - of the registry constituency, of which Verisign is a member. Most recently I represented the successful applicants for the .mobi sTLD, and less successfully to date, ICM Registry. I appear before this Committee not as an advocate for any client, however, but as a long time supporter of private sector management of the Internet domain name system (DNS) and a long-standing member of the ICANN community.

DNS Management Before the White Paper

In the spring of 1992, the non-military "Internet" was still largely a creature of the academy. There was no "world wide web" or user-friendly browser. Network Solutions Inc. (NSI) operated registries for the non-military Internet top-level domains, and provided end-user registrations services for those registries under a cooperative agreement (the Cooperative Agreement) with the National Science Foundation (NSF). (In the hopes of avoiding unnecessary confusion, I will refer hereafter to the successor to NSI's registry services business - Verisign.[1]) But by the time the Cooperative Agreement was scheduled to expire in 1998, that situation had changed radically. Given its research orientation, NSF determined to end its role in management of the Domain Name System (DNS) by simply permitting NSI to "carry on" after the contract expired. Had everything proceeded as expected, the Cooperative Agreement might have expired without anyone noticing. Instead, of course, the growing global commercial importance of the Internet produced a commensurate increase in Internet related IPOs and put "e-commerce" on the front page of every newspaper. Along with this increased commercial activity came increased commercial conflict, and investors, businesses, and policy makers around the world noticed.

As the Cooperative Agreement's final expiration date - September 30, 1998 - approached, it became clear that the structures in place to manage the DNS were not going to scale.

[1] The functions and activities are now split between Verisign and Network Solutions. After the NSI/ICANN registry agreement was entered into, Verisign acquired NSI. Following that acquisition, Verisign spun off the registrar (retail) elements of the former NSI business. Currently, Verisign performs registry services for .com and .net. Network Solutions, on the other hand, provides registrar services for a variety of top-level domains (TLDs).

- Policy authority resided, in significant part, with a single - albeit revered - human being. Dr. Jon Postel's consensus building skills - legendary in the technical community - were less suited to a litigious commercial setting. Complicating matters, Dr. Postel provided a variety of DNS related services, not only as a government contractor, but also as a member of the global, private sector Internet engineering community. This combined role made the source of Dr. Postel's authority unclear - was it DARPA, the Internet Architecture Board/Internet Engineering Task Force (IAB/IETF), the "Internet community," something else, or all of the above? The answer to that question inevitably depended on who was asked.

- Meanwhile, a publicly traded U.S. company - VeriSign - appeared to control the most valuable commercial assets associated with the public Internet - the .com, .net, and .org top-level domains (TLDs). Some objected to the company's trademark dispute resolution procedures; some to the amount of money it was making from a government granted monopoly; and still others to the commercial dominance of the generic TLDs it managed, especially compared to the then much smaller country code TLDs (ccTLDs), such as .uk; .fr; .ca; .jp, .nz, .au.

- A number of governments found themselves in the midst of ccTLD disputes - generally involving ccTLDs for their territories. For example, the British government was concerned about management of .pn (Pitcairn Island) and demanded redelegation.[2] And no one was sure why someone in Florida was marketing the ccTLD for Moldova - .md - to members of the medical professions in North America.

On the one hand, it seemed an inopportune moment for the U.S. government to walk away from the DNS management problem. On the other hand, it was clear that a U.S. mandated solution was likely to backfire. The U.S. government stepped in to develop a consensus among key players around the world in support of a non-governmental approach to DNS management.

After extensive consultation with other governments, the U.S. and international business community, the engineering community, and others - including quite a few members of this body - the Commerce Department codified the emerging consensus in a document commonly referred to as the "White Paper." Using existing statutory authority, NSF transferred the Cooperative Agreement to the Department of Commerce, which the Administration then charged with overseeing an orderly transition to private sector management of the DNS.

The Orderly Transition

Arranging an "orderly transition" turned out to be a bit of a challenge. Verisign, having fiduciary obligations to its shareholders, was not enthusiastic about relinquishing its profitable role as the exclusive registry and registrar for the generic TLDs. The

[2] Her Majesty's government quickly grasped the situation and resolved the conflict by submitting a petition signed by 45 of the 47 adult residents of Pitcairn.

allocation of rights and responsibilities under the Cooperative Agreement was as murky as the sources and limits of Dr. Postel's authority for the collection of activities that came to be known as the "Internet Assigned Number Authority"(IANA). Ultimately, the Cooperative Agreement was a less than fully satisfactory vehicle, from many perspectives, for managing the explosive, global growth of the commercial Internet that took place only a few years later. The Commerce Department used Amendment 11, which extended the Cooperative Agreement for two years, to tidy up a bit. Verisign agreed to get on board the privatization train, and gave the Commerce Department effective control over the authoritative root.[3]

In the months that followed, the Commerce Department "recognized" ICANN, and began what might best be called the transition back to private sector management of the Internet. The agreement between Verisign and ICANN was a critical piece of this transition. And the Commerce Department was at the table in those negotiations for several reasons:

- First, any agreement between ICANN and Verisign would necessarily involve some termination or suspension of Verisign's obligations to the government under the Cooperative Agreement.

- Second, the US government had an interest in ensuring on behalf of **all** of the stakeholders - including our international partners in the transition - that the agreement between ICANN and Verisign did not undermine any of the contractual concessions obtained in Amendment 11.

- Third, the U.S. government had an interest in making sure that something was in place in the event that the agreement between VeriSign and ICANN fell apart.[4]

- Fourth, the Commerce Department was at the table in the role of an honest broker. These negotiations proceeded as ICANN was being organized, and suffice it to say, by the time every one got to the negotiating table, VeriSign did not trust ICANN and ICANN did not trust VeriSign.[5]

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[3] This is an important point, which is often overlooked in the debate. At the time it was in VeriSign's strategic interest to let the Cooperative Agreement expire - a move that would have left NSI in (at least temporary) possession of the gTLD registration system, as well as the Internet's authoritative root, while creating a great deal of uncertainty about legal authority over the DNS, the resolution of which would take years of litigation. I am not suggesting that VeriSign "gave up" anything, but simply recalling that in the summer of 1998, litigation would have left NSI in control of .com, .net, and .org for a good long while. As it happened, however, VeriSign was simultaneously facing a trial in a high stakes anti-trust lawsuit. The company elected not to play its strong hand in the negotiations in order to preserve its best antitrust defense - its status as a government contractor.

[4] This explains the "springing" nature of VeriSign's obligations under Part II of the Cooperative Agreement.

[5] Anyone who attended early ICANN meetings, including the meetings in Singapore, Berlin, and Santiago will recall the level of tension between ICANN and VeriSign.

For all of these reasons it made sense at the time to give the Commerce Department an approval right in the registry agreement during the transition period. The Department's role was twofold: First, it was necessary to protect the newly achieved legal clarity about the registry operator's lack of authority with respect to the A root; and second, both VeriSign and ICANN felt that the Commerce Department could facilitate the VeriSign/ICANN relationship by playing the "honest broker" role. In both of these roles, the Commerce Department would serve as a trustee for the interests of the global Internet community in a successful transition to private sector management of the DNS, based on implementation of the principles set forth in the White Paper - preservation of stability, promotion of competition, and bottom-up policy development by an organization reflecting the global and functional diversity of Internet users and their needs.

It may help to consider the approval role of the Department of Commerce in the VeriSign/ICANN agreement in comparison to the Department's residual control over the authoritative root. Recall that when ICANN and VeriSign negotiated the registry agreement in 1999, the Commerce Department had only recently eliminated the registry operator's ability to manipulate the transition through its possession of the A Root. Commerce was appropriately reluctant to hand that kind of leverage to ICANN until it demonstrated some capacity to accomplish the goals outlined in the White Paper. Even so, the role of the United States government was as a trustee for the transition outlined in the White Paper: the retained authority over the root was (a) temporary, and (b) only to be used on behalf of the global community to facilitate the transition.

Having leveled the playing field by circumscribing VeriSign's ability to control the root, the parameters of justified intervention remained to be determined. Some things were immediately clear. As a trustee, any use of this authority had to be consistent with the White Paper principles. Given that the transition to private sector management was - as it so clearly remains today - dependent on the support of the global Internet community, the retained authority should not be used in ways that would be objectionable to stakeholders - including our governmental partners - in this transition. And finally, any use of that authority had to be faithful to the first principle of Internet "regulation" articulated nearly a decade ago - recognizing that any government's regulation of the Internet could have global consequences, individual governments should generally avoid regulatory intervention in favor of letting the market, industry self-regulation, and bottom-up consensus policy development work.

Over time, a general consensus emerged that the United States government should unilaterally exercise its retained authority over the A Root only to respond to a true threat to the stability of the Internet or DNS requiring immediate action. Any other use of that retained authority, as we have seen, undermines ICANN and jeopardizes the transition to private sector management, and the United States has - with some notable exceptions - confined its role accordingly.

The contract approval clause has a slightly different pedigree. There, the role of the Commerce Department was primarily that of the trustee and honest broker - in the event that one party thought the other was abusing its power or contravening the White Paper

principles it could appeal to the Commerce Department, which could, in turn, attempt to facilitate a sensible outcome consistent with White Paper blueprint.

The question of how this approval authority might be appropriately exercised has not been the subject of much debate in the community. But ultimately, the contract approval clause must serve to facilitate private sector management of the DNS in accordance with the principles articulated in the White Paper. So two questions become relevant: First, is the proposed contract inconsistent with the White Paper principles, particularly if that inconsistency reflects some imbalance in bargaining positions. Second, where the answer to the first question is yes, will intervention further - and not undermine - the success of the ICANN experiment? This question must be addressed on both a substantive and a procedural level.

It is worth noting that the approval authority we are discussing today is not the only avenue for government input. Competition authorities with jurisdiction over this agreement - both in the United States and elsewhere - are entitled to determine whether the agreement complies with applicable law. Individual governments are always entitled to take positions on ICANN matters, so long as their input is transparent and, of course, consistent with any applicable limits on government activities. Within the four corners of the ICANN Bylaws, the ICANN governmental advisory committee (GAC) also serves as a mechanism through which governments may express their concerns about and/or support of this agreement. With respect to the GAC, two important caveats must be made: First, that participation must be subject to reasonable procedures and timelines established with community input. Second, it is a matter of great concern to ICANN watchers in the United States and abroad that the U.S. appears to be increasingly willing to use its unique authority - whether with respect to the root, contract approval, and/or the independence and autonomy of ICANN to elicit, stifle, or direct GAC input for purposes unrelated to the success of the ICANN process.

No matter where one comes out on the merits or deficiencies of the .com agreement and the appropriate use of the Commerce Department's contract approval authority, I know of no one who admires the process used to get here. Like other ICANN decisions, a relatively short list of deficiencies generates a fairly large amount of frustration in the community. The following changes are needed to improve the ICANN process and preserve private sector management of the DNS:

- The ICANN community must articulate and enforce agreed-upon roles assigned to various constituencies in its deliberative process.

- The ICANN community must clarify and articulate ICANN's responsibilities with respect to competition. "Competition" is at the heart of the ICANN mission, and it is a highly complex issue, but the community is clearly not satisfied with the "leave it to the anti-trust authorities to intervene if they don't like it" approach.

- The ICANN community must clarify and articulate the role of governments in its processes. Governments are a part of the process, but they should not be permitted to

derail innovative approaches on vaguely articulated "public policy" grounds. ICANN has no ability to diminish sovereign authority, so there is no reason to exempt governments from rules regarding participation adopted by the ICANN community.

- ICANN must be more forthcoming about explaining its controversial decisions. The ICANN community, including those most directly affected by the Verisign settlement, received very confusing information about how this negotiation was conducted, who insisted on what provisions, and how these negotiations related to the policy development underway within ICANN's Generic Names Supporting Organization. This kind of confusion breeds mistrust among both governments and members of the broader ICANN community, and undermines ICANN in the eyes of the community.

I appreciate the Committee's time, and am happy to answer any questions you may have.

**Before the House Committee on Small Business**

**United States House of Representatives**

**Hearing on "Contracting the Internet:**

**Does ICANN Create a Barrier to Small Business?"**

**Wednesday, June 7, 2006, 2:00 p.m.**

**Testimony of**
**John O. Jeffrey, Esq.**
**General Counsel and Corporate Secretary**
**Internet Corporation for Assigned Names and Numbers (ICANN),**
**a California Nonprofit Public Benefit Corporation**

**Introduction**

Mr. Chairman and members of the Committee, thank you for the opportunity to speak before the Small Business Committee. I am John Jeffrey, General Counsel and Corporate Secretary of the Internet Corporation for Assigned Names and Numbers, also referred to as ICANN. ICANN is a nonprofit public benefit corporation organized under the laws of the State of California. ICANN is recognized by the world community as the global authoritative body on the technical coordination and organizational means to ensure the stability and interoperability of the Internet's domain name and numbering systems. I am pleased to speak before your Committee, as we are very proud of ICANN's role in the domain name system and ICANN's role in helping to facilitate a global interoperable Internet, used by American small businesses and small businesses throughout the world.

The limited and distinct mission of The Internet Corporation for Assigned Names and Numbers is clearly set out in Article I of ICANN's Bylaws. ICANN:

1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are
    a. Domain names (forming a system referred to as "DNS");
    b. Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and
    c. Protocol port and parameter numbers.
2. Coordinates the operation and evolution of the DNS root name server system.
3. Coordinates policy development reasonably and appropriately as they relate to these technical functions.

At the core of our mission is global interoperability and stability of a single Internet. ICANN has been established to serve the Internet community in maintaining the stability and security of the Internet's unique identifier systems, while at the same time fostering competition in the generic registry and registrar space where appropriate to give Internet users greater choice and service at optimal cost.

Since its origins in 1998, ICANN has helped secure an environment in which well over one billion people can use the Internet daily with universal resolvability. ICANN has fostered greater choice, lower costs and better services to DNS registrants, including over ten million small businesses in the United States alone. The Internet requires a stable and secure system of unique identifiers if it is to serve the global community efficiently and reliably – which is essential for its continuing growth and stable operation.

ICANN's successful overall coordination of the DNS underpins the operation of the global Internet. Each day this system supports an estimated 20 billion resolutions, which is, more than 6 times the number of phone calls in North America per day. Each day more than one billion people use the Internet. Due to the universal DNS resolvability secured and coordinated by ICANN, the Internet works in the same way for every user of the Internet.

**ICANN's Achievements in Fostering Competition**

Since 1998, ICANN's self-governance model has succeeded in addressing stakeholder issues as they have appeared, and in bringing lower costs and better services to DNS registrants and everyday users of the Internet.

Among ICANN's main achievements are the following:

- **Streamlined domain name transfers.** After significant study and discussion, and working with the accredited gTLD registrars, ICANN developed a domain name transfer policy that allows domain name holders to transfer management of their domain names from one registrar to another, bringing further choice to domain name holders.

- **Market Competition.** The market competition for generic Top Level Domain (gTLD) registrations established by ICANN has lowered domain name costs in some instances by as much as 80%, with savings for both consumers and businesses. Additional detail on this is provided below.

- **Choice of Top Level Domains (TLDs).** ICANN continues to introduce new top-level domains to give registrants right of choice. These include the introduction of seven new gTLDs in 2000 and four additional ones so far from the 2004 sponsored top-level domain name round. Additional detail on this is also provided below.

- **The Uniform Domain Name Dispute Resolution Policy (UDRP)**. The Policy has resolved more than 6000 disputes over the rights to domain names, and proven to be efficient and cost effective.

- **Internationalized Domain Names (IDN)**. Working in coordination with the appropriate technical communities and stakeholders, ICANN's adopted guidelines have opened the way for domain registration in hundreds of the world's languages.

**ICANN's Achievements in Registry and Registrar-Level Competition**

Since ICANN was founded in 1998, as a private California-based, public benefit, non-profit corporation, ICANN has entered into many private arms-length agreements with registries (that run the generic top-level domains), and with registrars (who are accredited by ICANN to sell domain names directly to consumers).

A 2004 report issued by the Organisation for Economic Co-operation and Development (OECD) stated that:

> "ICANN's reform of the market structure for the registration of generic Top Level Domain names has been very successful. The division between registry and registrar functions has created a competitive market that has lowered prices and encouraged innovation. The initial experience with

competition at the registry level, in association with a successful process to introduce new gTLDs, has also shown positive results."

**-The Competition Picture in 1998**

In 1998, there were only three main generic top-level domain name registries (.COM, .NET, and .ORG) from which domain names could be purchased by American small businesses and other consumers. Only one company was running all three registries, Network Solutions. Most registrations by small businesses were in .COM.

There was a single registrar in 1998. That same company that ran the registries, Network Solutions, was the only registrar from which a consumer could purchase a domain name.

The price of a single domain name in .COM in 1998 was greater than $50.00 per domain name, per year.

**-The Competition Picture in 2006**

The .COM Registry, now controlled by VeriSign, maintains a significant percentage of the marketplace, but now accounts for less than 50% of the market.

The price for a .COM registration today depends upon where you purchase the name from, but in some instances the price of a domain name has been reduced by as much as 80%.

On June 4, the price of a .COM domain name for a one-year registration at GoDaddy (the largest registrar by market share) was $8.95, or $6.95 if you are transferring from another registrar. The price at Network Solutions (now a separate registrar business that is only partially owned by VeriSign) is $34.99 per year. Other registrars charge various prices, and offer a series of other services in order to compete in the marketplace.

Small businesses can choose from over 688 ICANN-Accredited Registrars, derived from 261 unique business groups (a significant number of the 261 owning interests in multiple registrar companies). 387 of these ICANN-Accredited Registrars and 121 of these unique business groups are American businesses. The others are located in 39 different countries.

As a result of competition, the registration of a domain name is one of the smallest components of the cost of operating a small business cost, comparable if not smaller than the cost of pens, paper, and a stapler.

In addition to the greater choice in registrars, consumers also have a greater choice which top-level domain to use, some specialized for specific areas.

Between 2000 and today, eleven new generic top-level domains have been introduced by ICANN. Four of those TLDs (.CAT, .JOBS, MOBI, and .TRAVEL) have signed agreements with ICANN in 2005 and 2006.

ICANN currently accredits domain-name registrars to sell names in the following Top Level Domains:

- .AERO - a top-level domain reserved for the global aviation community, sponsored by Societe Internationale de Telecommunications Aeronautiques SC (SITA)

- .BIZ - a top-level domain restricted to businesses, operated by NeuLevel

- .CAT - a top-level domain reserved for the Catalan linguistic and cultural community, sponsored by Fundació puntCat.

- .COM - a generic top-level domain operated by VeriSign Global Registry Services

- .COOP - a top-level domain reserved for cooperatives, sponsored by Dot Cooperation LLC

- .INFO - a top-level domain, operated by Afilias Limited

- .JOBS - a top-level domain reserved for the human resource management community, sponsored by EmployMedia LLC

- .MOBI - a top-level domain reserved for consumers and providers of mobile products and services - sponsored by mTLD Top Level Domain, Ltd.

- .MUSEUM - a top-level domain restricted to museums and related persons, sponsored by the Museum Domain Management Association (MuseDoma)

- .NAME - a top-level domain restricted to individuals, operated by Global Name Registry

- .NET - a generic top-level domain operated by VeriSign Global Registry Services

- .ORG - a generic top-level domain operated by Public Interest Registry

- .PRO - a top-level domain restricted to licensed professionals operated by RegistryPro

- .TRAVEL - a top-level domain reserved for entities whose primary area of activity is in the travel industry, sponsored by Tralliance Corporation.

In addition, an agreement for the introduction for .TEL has recently been completed and negotiations continue relating to other top-level domains from the 2004 round.

**The VeriSign Settlement Agreement and proposed .COM Registry Agreement**

On October 24, 2005, ICANN announced a proposed settlement to end the long-standing disputes with VeriSign, the registry operator of the .COM and .NET registries. The proposed agreements between ICANN and VeriSign provide for the settlement of all existing disputes between ICANN and VeriSign, coordination of planning where appropriate, and a

commitment to prevent any future disagreements from resulting in costly and disruptive litigation.

One of the primary issues of dispute has surrounded the proposed introduction of new registry-level services by VeriSign. The proposed .COM Registry Agreement was an essential part of any settlement between ICANN and VeriSign since the introduction of proposed registry services was a central part of the long-standing conflict and had resulted in litigation between the parties.

Taking the ICANN community's lead, ICANN followed the recommendation arising from policy development by ICANN's Generic Names Supporting Organization on the introduction of new registry services. ICANN proposed and VeriSign agreed that new registry services would be subject to ICANN technical review (a topic of long-standing conflict) and agreed to the community's proposed process to resolve this critical area of conflict.

Additionally, through these agreements ICANN and VeriSign committed (where appropriate) to utilize binding arbitration to prevent future disagreements from resulting in costly and disruptive litigation.

Under the current VeriSign .COM Registry Agreement, VeriSign is permitted an automatic renewal of the .COM agreement. That original renewal clause, which was a key factor in the negotiation of the 2001 .COM Agreement, was added in exchange for concessions relating to the yielding of VeriSign's rights in .ORG and an opportunity for a re-bidding process relating to the .NET egistry. Subsequently, .ORG was transferred to the Public Interest Registry in 2001 and .NET was re-bid in 2005. Independent evaluators after a careful review re-awarded the .NET registry to VeriSign, and a new agreement was executed with VeriSign for .NET last year. As part of that re-bid the wholesale price of a .NET domain name registration to registrars was lowered from $6.00 to $4.25. It is noteworthy however, that the reduction in price was not in any measurable way passed through by registrars to small businesses or consumers.

In the VeriSign settlement negotiations, which were unrelated to the .NET re-bid, VeriSign set out a case to ICANN, that security and stability of .COM was more important than a reduction in price. The price of $6.00 which was set during the first .COM Registry agreement with ICANN in 1999, has not been subject to review or increase during the past seven years. ICANN agreed in the proposed .COM Agreement to allow VeriSign to increase the price of a .COM registration by up to 7% per annum. Following public comment, ICANN and VeriSign renegotiated a number of terms, and agreed to limit those proposed increases to 7% in four of six years.

Additionally, VeriSign could only raise their rates in the two other years, if VeriSign was able to show a need to do so, to support the .COM infrastructure in support of security or stability.

Effectively, VeriSign can only raise the price of a .COM registration $1.86 (to $7.86) before 2012 without providing further justification. We do believe that there may be an impact to the "domainers" (speculators that have registered tens or hundreds of thousands of domain names), but it is difficult to determine what the long-term impact will be to even that small number of impacted businesses, particularly when weighed against the potential benefit provided to all Internet users from a stable and secure Internet.

On 29 January 2006, an additional 21-day public comment period was commenced to obtain feedback on the revised terms. On February 28, 2006, ICANN's Board of Directors weighed the factors involved with continuing the conflict and lawsuits with VeriSign, against the proposed terms; and, voted in favor of the settlement. Subsequently, ICANN submitted the .COM Registry Agreement to the Department of Commerce and we await the results of the Department of Commerce's review.

Based upon the reduction in the price of registrations to small businesses and consumers since 1998 (in some cases by as much as 80%), if the agreement is approved, the proposed increases, if VeriSign elects to make them, are likely to be an insignificant increase to most small businesses operating a website. This is particularly true when measured against the countless other services that are part of building a web presence, including web hosting, web site construction, email servers, and other tools offered, in many cases, by the registrars as part of their services. It is also a small amount when measured against the potential benefit relating to a well managed, secure and stable .COM registry.

The agreements between ICANN and VeriSign are likely to facilitate a more secure and stable .COM registry and Internet. In the long-run, a structure to support VeriSign's business and to encourage and provide incentives for VeriSign to invest in the stability and security of the .COM registry, is likely to be a better choice than requiring them to cut costs for the benefit of a few parties.

**Conclusion**

In conclusion, Mr. Chairman, ICANN supports the small business community through its actions. Due to the universal DNS resolvability secured and coordinated by ICANN, the Internet works in the same way for every user of the Internet. ICANN remains committed to the stewardship of a stable and globally interoperable Internet, and is committed to fostering competition in the domain name marketplace. Through private agreements, ICANN has acted to enhance competition in the registry and registrar industry, without undermining ICANN's commitment to the overall stability and security of the Internet.

# Rick White

## Testimony Before the House Small Business Committee

## June 7, 2006

Chairman Manzullo, Ranking Member Velazquez and Members of the Committee:

My name is Rick White. I served as a member of the House of Representatives from Washington state from 1995 to 1999, during which time I had the honor to serve with members of this Committee. As a member of Congress I helped establish the Congressional Internet Caucus. After my time in Congress, I served as the CEO of TechNet, a bipartisan political network of Chief Executive Officers and Senior Executives of leading U.S. technology companies devoted to advancing and promoting U.S. competitiveness and innovation.

Just to be clear, while I serve as a member of VeriSign's Advisory Committee, which provides perspective on Internet matters, I am not here as a representative of VeriSign. The opinions and perspectives I relate here are my own.

I want to applaud the Chairman for calling this hearing, because the Internet plays an increasingly vital role in the growth and success of small businesses.

I have been fortunate to watch the development of the Internet from several vantage points. As a member of Congress, I saw how the introduction of the Internet gave small businesses new opportunities to expand their horizons and become more efficient in the way they run their businesses. At TechNet, I saw how important innovation is to the growth of our economy. It was during my tenure at TechNet that new ventures such as Google went from small startups to household names and changed the way we use the Internet. As the CEO of TechNet, I experienced first-hand the challenges of operating a small enterprise and how the Internet can help.

Simply put, there is clearly a lot at stake here, not just for small businesses but for everyone.

More than 1 billion users worldwide rely on the Internet, a 300 percent increase since 2000. In the United States alone, e-commerce will account for more than $100 billion in sales this year. In fact, nearly a quarter of our economic value is transmitted over the Internet or other networks.

But it's not just the raw economic numbers that tell the story. For small businesses, the Internet has become their lifeline to communicate, sell and market themselves. Email has replaced faxes and letters as the primary means to communicate. Google and other search engines have become a primary place to conduct market research. eBay has become an important channel. And software applications such as Quicken and Microsoft Small Business Center are indispensable tools to help small business owners track and manage their businesses.

And while the last decade has led to exciting changes, we have only scratched the surface of the possibilities. From VoIP to telepresence to PDAs to video over the Internet to blogs, we are at the early stage of economic and social changes that will inevitably affect our nation's small businesses. We are truly fulfilling the Chinese proverb, "May you live in interesting times."

Small businesses are, of course, focused on ensuring that the Internet remains affordable, reliable and secure. They don't much care how it works, just that it does. In that respect, they view the Internet much like any of the other services they receive from vendors or partners. They want their phones to work, their deliveries to make it on time, their electricity to turn on, and their financial transactions and payroll processed without a hitch.

And small businesses have grown accustomed to the Internet always being on and always being available. What is interesting is that even as the demands on the Internet have grown the infrastructure has continued to work practically flawlessly, with even greater performance.

In short, small businesses can take the Internet for granted because the level of investment in the Internet infrastructure has grown at a pace ahead of Internet usage and traffic. It has to, or Internet availability would suffer, or in a worst case, fail. VeriSign, for example, has apparently invested over hundreds of millions to build out the infrastructure for the .com and .net domain names.

Sometimes it is hard to take large dollar numbers and put them in perspective, but with the help of some statistics I will try using data included in a recently published VeriSign white paper. Only six years ago, the number of computers needed to handle requests for websites was 13. Today, VeriSign has approximately 1,300 computers to serve that function and expects that number to double by 2012 to 2,600 computers. In addition, the number of servers needed to manage traffic

has also increased dramatically, from 60 in 2000 to approximately 4,000 today. And that number is also projected to double.

With that investment in infrastructure, VeriSign's primary computers handling .com and .net traffic can manage 10,000 times the volume they could handle in 2000.

It is that type of investment in the infrastructure that has enabled small businesses, indeed all of us, to take the Internet for granted. And it is that scale of infrastructure growth that has enabled the infrastructure to withstand what are often frightening attacks on the Internet.

And small businesses are increasingly the target of these attacks. According to CipherTrust, more than 180,000 PCs are illegally hijacked each day and turned into zombies that are then used to mount attacks against websites and Internet infrastructure. Oftentimes, these attacks are extortion attempts targeting e-commerce sites. The threat? Pay up or the attacks will continue and ruin your business. There have been some high-profile incidents this year. In January, an online DVD retailer had its website disabled by hackers in an extortion attempt.

While these cases are usually isolated, starting in January, a hacker began using approximately 32,000 hijacked PCs to disable over 1,500 websites. According to press accounts that incident is still under FBI investigation.

While e-commerce sites are a popular target, hackers also try to take out the Internet infrastructure in hopes of disabling everyone using the Internet. In 2002, for example, the 13 DNS root servers were attacked, slowing down Internet traffic. Another wave of attacks – about 70 times more powerful - occurred in January 2006. Neither attack succeeded in taking down the Internet, but they are wake-up calls for everyone who relies on the Internet.

That gets us to the question before the Committee on whether this new agreement on the future of the .com domain is good for small businesses. In my estimation, it is.

As I mentioned earlier, small businesses don't care how the Internet works, they just want it to work. Small businesses see the abuse of the Internet – whether its attacks by hackers, spyware, SPAM or identity theft – and want to know that steps are being taken to address it.

The new .com agreement approved by the Internet Corporation for Assigned Names and Numbers, the body designated by the Department of Commerce to manage the technical coordination of the Internet infrastructure, strikes the right balance. It protects the Internet infrastructure by ensuring continued investment and protects small businesses and consumers by imposing checks on domain name price increases and requiring notification before any price increase could go into effect.

The ICANN-VeriSign agreement protects the Internet infrastructure by ensuring that companies such as VeriSign have incentives to continue to invest in it. It does so by affirming VeriSign's current agreement that if it continues to do an excellent job of managing the .com infrastructure it can expect to have its contract renewed in 2012. ICANN has made that a principle of its agreements not only with VeriSign, but other domain name registry operators.

ICANN has done so because it understands that businesses will not invest tens of millions of dollars in an infrastructure if there is uncertainty about the continued stewardship of that infrastructure. The agreement, however, gives ICANN the right, to fire VeriSign from its job as the .com operator if it fails to live up to its commitment to operate it at the highest level.

The agreement also protects the Internet infrastructure by ensuring that .com remains under the operation of a U.S. company. While the .com domain name is global and competes globally with domains in other countries, such as .fr for France or .au for Australia, U.S. businesses significantly rely on it to conduct their business.

The agreement also protects the Internet infrastructure by keeping it with an operator that has a stellar record managing this vital infrastructure. Under VeriSign's stewardship, the .com infrastructure has been 100% available for over seven straight years. It is hard to imagine the backlash if a change was made for change sake and something went wrong.

But any agreement also has to protect small businesses and consumers who rely on the Internet remaining affordable. This agreement passes this test as well. A domain name is a relatively inexpensive component of a small business' cost.

VeriSign does not sell domain name registrations to consumers. Companies called registrars charge between $10 a year to $35 a year for the right to a domain name. VeriSign receives $6 per domain name for its role in making the domain name infrastructure for .com operate flawlessly. That $6 fee has been frozen in place for seven years.

Under this agreement, checks on VeriSign's domain name fee would remain in place. Over the next six years, VeriSign could not raise prices by more than a total of $1.86.

Another condition, however, was imposed on VeriSign. It must give six months notice prior to any price adjustment. That means that a small business could "lock in" at existing prices for 3, 5, 10 or literally as many as 100 years (Network Solutions offers 100-year registrations).

So the question before us is whether the revised .com agreement ensures that the Internet will remain affordable, reliable and secure. I think by any measure this agreement achieves all three of those objectives.

Mr. Chairman, small businesses and consumers take for granted the capabilities and tools that the Internet provides, but those involved in the policies that determine its future and the companies responsible for its infrastructure do not have that luxury. This hearing is an important opportunity to examine whether the Internet remains strong to meet the growing needs to small businesses, and indeed, our whole economy. I want to thank you for the opportunity to give my perspective.

**Before the House Committee on Small Business**

**United States House of Representatives**

# Hearing on "Contracting the Internet: Does ICANN Create a Barrier to Small Business?"

**Statement of W.G. Champion Mitchell**
**Chairman and Chief Executive Officer**
**Network Solutions**

**June 7, 2006**

**Introduction**

Good afternoon Chairman Manzullo and members of the Committee. I am Champ Mitchell, Chairman and Chief Executive Officer of Network Solutions.

Mr. Chairman, thank you for the invitation to testify today on the proposed .com registry agreement between the Internet Corporation for Assigned Names and Numbers (ICANN) and VeriSign. I am grateful for your initiative on this issue and for your appreciation of how important the Internet is for our overall economic strength as more and more entrepreneurs take advantage of the Internet's remarkable potential for innovation, efficiency, and productivity. Today, 10.5 million small businesses in America use the Internet to be found by potential customers looking for goods, and increasingly by those looking for services. Over 3 million additional small businesses want to obtain their first online presence in the next twelve months according to IDC, an independent research firm. These new entrants are generally among the smallest of our American small businesses. So at this time there is nothing the Committee could do that would better help small businesses everywhere than keeping the cost and ease of access to the Internet open to the smallest of American businesses.

Network Solutions is the pioneer of the domain name registration service and is a leader in providing Web solutions for small businesses. Indeed, the segment we most target as a company is small businesses. Our job is to make it easy for the small business to understand what they need to be successful online and to provide it cheaply and with a great deal of counseling on its use. Today our growth comes exclusively from small businesses, and they make up 3.4 million of our 4 million customer base. More than half of these have two or less employees.

I joined what is now Network Solutions while it was still part of VeriSign in 2001, and I spearheaded its successful turnaround and then its spin-off from VeriSign in November 2003. Network Solutions continued to perform the competitive registrar functions that VeriSign had conducted, while VeriSign retained the monopoly registry operator business. I have many years of experience in the Internet business, including

previously as executive vice president and general manager of VeriSign's Mass Markets Division.

The shockingly self-serving agreement between ICANN and VeriSign has significant negative implications for small businesses and for the Internet community as a whole. At stake here are the core values that will ultimately determine whether ICANN will survive as the entity guiding the Internet as it grows. These core values of Internet governance include competition, transparency, accountability, stability and innovation.

Let me state clearly at the outset that I have absolutely no objections, Mr. Chairman, to VeriSign continuing to operate the .com registry under market conditions. VeriSign has performed its job as a registry competently, as have Affilias for .info and .org and NeuStar for .us and .biz. My sole concern is that the .com registry operates in a manner consistent with the principles of competition, transparency and bottom-up, consensus-building management practices. If the only issue was whether the current registry agreement was being renewed as is, without the changes that grant one company a perpetual monopoly over .com with the ability to increase the price without any justification, we would probably not be having this hearing.

**Overview**

The proposed agreement would settle pending litigation between ICANN and VeriSign and provide them both a great deal of additional income, at the expense of the rest of the Internet community, including American small businesses, and ultimately at the expense of United States influence over the Internet. I submit that, for any fair-minded reader, the terms of the proposed agreement truly shock the conscience. The agreement would extend VeriSign's existing contract to operate the .com domain name registry through at least 2012, and thereafter effectively in perpetuity under an automatic renewal clause that would make future renewals automatic in all but the most limited of circumstances. At the same time, the agreement would authorize VeriSign to raise prices—*without cost or any other justification*—in four of the next six years. VeriSign would essentially become an unregulated monopolist—exploiting a government-

approved monopoly—a position fundamentally at odds with the competitive principles on which the United States economy is based.

The ICANN Board of Directors narrowly approved the proposed settlement agreement on February 28, even though it was vociferously opposed by all but one of ICANN's core constituencies that commented, including the Commercial and Business Constituency, the ISPs, the registrars, and the At Large Advisory Committee. Even the one exception, VeriSign's own Registry Constituency, did not support the agreement, but said that they wanted the same terms if VeriSign was to receive them in the proposed agreement. In addition, Michael Roberts, the first President and CEO of ICANN, protested on the ground that "monopolies require regulation." The Joint Statement from those Board members who voted in favor of the .com proposal essentially abdicated ICANN's responsibility for upholding the core values of bottom-up coordination, transparency, and competition.

Indeed, in an Open Letter to ICANN, the Canadian Internet Registration Authority (CIRA) specifically objected to the lack of transparency and accountability in the process through which ICANN renewed the .com registry agreement. In protest, CIRA withdrew all financial and logistical support for ICANN. CIRA's position is particularly striking given that CIRA is one of only a few non-U.S. Internet agencies that have provided support for ICANN. CIRA's previous support was extensive, including voluntary financial contributions and sponsorship of ICANN meetings. We Americans have few allies in continuing our influence over this powerful tool we created. Most of the world is allied against us and waiting for one credible cause to try to strip us of our influence. The granting of a perpetual monopoly against the protests of almost the entire Internet world community, including many of us here, will be that cause.

The proposed settlement agreement is now before the U.S. Department of Commerce, which oversees ICANN's management of the Domain Name System and is obligated to approve or disapprove the proposed agreement. Without opening a competitive bid process, the proposed .com registry agreement would revise and extend the exclusive

2001 .com registry agreement between ICANN and VeriSign more than one year before it is due to expire. The Commerce Department should conduct a competitive bid process; but, at a minimum, the Department must reject the proposed settlement agreement in its current form and direct the parties to agree upon revised terms that include meaningful renewal requirements and price restrictions. Indeed, because of the grossly skewed terms of the present agreement, there is ample room for the parties to renegotiate an agreement that is more consistent with competitive principles and that still leaves VeriSign with an extremely profitable contract, an extreme profitability it enjoys today.

To that end, today, I want to address two key topics: Why the proposed .com agreement is fatally flawed and what the U.S. government can do to compel ICANN to correct these grave problems for the long-term interests of small businesses and, indeed, all members of the Internet community.

**The Proposed Agreement Contains Fatal Flaws that Must be Resolved**

This Committee has heard much testimony today on the purported risks that this proposed agreement is designed to alleviate, including the security and stability risks for Internet users. We acknowledge that stability and security concerns are legitimate and must be addressed. However, there is no reason to believe that a perpetual monopoly or unjustified price increases are necessary to address these concerns. VeriSign has not been heard to say that it cannot operate the .com registry under the current contract with security and stability. Indeed, when it sought a renewal of its .net registry contract a few months ago, it touted its ability to operate a secure and stable registry and to continue to do this with a price cut of 40% (dropping .com from $6 to $3.50). The current proposal is not necessary to protect stability of the Internet. In fact, it does not benefit stability. The only benefit is to VeriSign and ICANN, both of which put additional money in their coffers with no additional service given. The Internet community, including small business, gets to pay for this with nothing received in return except becoming subjected to a perpetual, unregulated monopoly with frequent price increases.

I have two major concerns: First, the proposed agreement contains a renewal provision that, as I have already mentioned, appears to be virtually automatic and

guarantees a perpetual monopoly. Under the proposal, VeriSign would operate the largest domain name registry, which comprises more than 75 percent of all registered U.S. domain names, without a competitive bidding process, now or at any point in the future.

Second, this proposal would grant VeriSign the ability to increase .com registration fees in most years without cost or other justification, competition, or oversight. For small businesses that rely on the ubiquitous name recognition of .com domain names, the impact of the guaranteed price increases would be immediate and obvious. Under the proposal, .com registry fees would increase by a total of 31 percent over six years without any justification. If .com continues to grow at the rate it did in 2005, the proposal would generate for VeriSign an additional $1.3 billion in revenue over the initial six-year term of the contract. The price for .com registration is now $6. (Although VeriSign can increase this price under the current contract on a cost-justified basis, it has not done so since the agreement was implemented in 2001 - a telling fact.) An increase of 7 percent per year over a four-year period (which represents the number of years that VeriSign does not have to justify price increases) means that the price will rise to $7.86, or 31 percent. Although this price increase may seem inconsequential, in the aggregate, it would cost small businesses hundreds of millions of dollars—and this money would go straight into VeriSign's pockets, with a bit skimmed off for ICANN. Indeed, with this nation's deeply held belief in the value of competition, it is hard to believe that the U.S. government would ever condone an agreement that afforded a monopolist such as VeriSign the right to increase its prices without offering any cost-justification. So, too, here—if management of the .com registry is not to be put to a competitive bid process, *at a minimum*, the government must ensure that VeriSign's price increases are cost-justified.

*Small Business Impact*

For small businesses in particular, and the customers they serve, .com domain names furnish virtual storefronts and extend global reach in ways that are not possible to replicate. Large and small businesses typically view other top-level domains – including .net, .info, .biz and .us – not as substitutes for a .com name, but at best as a way to protect

their trade names or as an additional opportunity to reach consumers. Under the proposal, small businesses and other purchasers of .com names would bear higher prices at a time when prices for .com should be going down, as are other TLDs, not up.

Moreover, as noted above, the reliance of small businesses on using Web sites is projected to grow rapidly. IDC projects that the number of American small businesses establishing an online presence will grow to almost 20 million by 2009. Thus, the proposed agreement puts the long-term interests of consumers and small businesses at the mercy of an unregulated monopoly at a time when their reliance on the Internet to provide an expanded business presence is increasing at an astronomical rate.

*Way Forward*

This proposed agreement represents an abandonment of the core values on which ICANN was founded – including competition and transparency – and which now face closer scrutiny as part of the Commerce Department's recently initiated review of the Memorandum of Understanding (MoU) between the Department and ICANN. As a simple matter of logic, the Commerce Department should not make a decision on the proposed .com agreement until it has resolved the key public policy issues that are at stake surrounding the MoU, which is up for renewal in September. The proposed .com agreement would surrender ICANN's ability to introduce competition into the Internet's dominant Top Level Domain (TLD), making most of the MoU review moot.

Once the principles governing ICANN's operations are clarified and strengthened, the Department of Commerce, with the expert input of the U.S. Department of Justice regarding the competition implications of the proposal, must ensure that the .com agreement's most troubling aspects – the automatic renewal provisions and the ability to raise prices without cost justification – are revised by ICANN to ensure long-term competition in this key operating area of Internet infrastructure. As the .com agreement does not expire until more than a year from now, there is no need for the Department of Commerce to foreclose these important MoU issues by prematurely approving the proposed agreement.

**Creating an Unregulated Monopoly at the Expense of Competition is not Justified**

The proposed agreement cannot be justified on legal or policy grounds, particularly because the .com deal promotes neither competition nor Internet stability. Consumers, including small businesses, would pay a high price in the absence of the checks and balances of either competition or cost-related pricing. VeriSign and ICANN, on the other hand, would reap large financial benefits under an agreement that would guarantee VeriSign the right to raise the price for registry services by 7 percent in each of four of the next six years and pay over part of this to ICANN. In the two other years, VeriSign would be able to raise prices on a cost-justified basis.

This is particularly troubling because we have just seen that competition can lower prices for consumers in the industry. Last year, VeriSign itself agreed to *reduce* registry fees by more than 40 percent to win an extension of the .net registry contract with ICANN, resulting in an agreement that drops the price cap for .net from $6 to $3.50 through year-end 2006.

Furthermore, the absence of competition in granting the proposed agreement is troubling because there is no evidence that prices for .com should be increasing, rather than decreasing. Indeed, the exact opposite is true. Had ICANN put the .com agreement out for bid – as the existing agreement contemplates if VeriSign seeks a price increase – ICANN would have seen the benefit of competition in lower fees for .com. A cost-justification provision in the proposed agreement, such as is in the present registry contract, would provide a safeguard to ensure that price increases were based on competitive market conditions or cost-justification, rather than the financial self-interests of VeriSign, as the monopoly registry operator, and ICANN, as the oversight body that would relinquish meaningful oversight over .com domain registration under this proposal. Specifically, there is no reason to believe that registry costs are increasing faster than the growth in domain names and revenues. In fact, VeriSign has told analysts that one of the beauties of the registry business is that a high percentage of the costs are fixed and thus

drop per domain as the number of domains increases. This leaves even more money available for security and stability, if that is what VeriSign elected to do with it.

*Stability, Security*

Similarly, VeriSign and ICANN have failed to demonstrate that the .com contract must be handed to one registry operator, forever, to ensure Internet security and stability. VeriSign has ample incentive to invest in infrastructure to ensure the security and reliability of the DNS infrastructure without the blunt instrument of a government-approved monopoly. In fact, ICANN has reported that under the existing .com registry agreement, which requires that price increases be justified, VeriSign has made significant investments in infrastructure and development.

Again, the .net experience is instructive. There are far fewer units in the .net registry over which to spread fixed costs than .com. Nonetheless, under a competitive bid process, VeriSign *lowered* rather than raised prices for .net and at the same time committed to infrastructure improvements that enhanced security safeguards. There is no reason to believe that competition would not produce a similar outcome for .com – lower prices and better security – if given a chance.

The guarantee of future competition also is warranted on security and stability grounds because there is no evidence that only VeriSign can operate the .com registry in a way that safeguards the security interests of Internet users. Moreover, the transfer of a generic TLD registry could be – and has been – handled without risk of disruption. This was done when .org went from VeriSign to Affilias. ICANN embraced the very manageability of such a transition when it opened the .net registry to competitive bids in 2005. Concentrating the management of the .com registry in the hands of one company, without competition, on security and stability grounds also runs counter to government contract practices. Agencies that rely on secure networks routinely award competitively bid contracts, with limited terms, for the operation of core parts of data and communications systems.

Finally, the proposal also lacks provisions that ensure VeriSign would re-invest any part of the "monopoly surplus" of more than $1 billion under the contract back into network infrastructure stability and security improvements.

**The Proposed Agreement is Contrary to the Current MoU**

Even among the slim majority of ICANN Board Members who voted for the proposed agreement, several raised concerns about the guaranteed renewal clause for VeriSign. Under the terms of the current MoU, ICANN and the Department of Commerce commit to promote the management of the Domain Name System in a manner that will let market mechanisms support competition to "lower costs, promote innovation and enhance user choice." This agreement would run counter to all of these values by eliminating competition, increasing costs, and discouraging innovation through a guaranteed monopoly. The strong preferences for .com domain names means small businesses and other consumers are left with virtually no option other than paying increased registry fees. VeriSign's own data show that of individuals and business registering a domain name, the average number likely to renew is 71 percent.

*"Bottom-Up" Management*

In the MoU, ICANN and the Commerce Department also agree to promote "development of a private sector management system that, as far as possible, reflects a system of bottom-up management." Again, the process under which this agreement was approved by ICANN's Board ultimately thwarted, rather than advanced, these goals. ICANN heard from a broad cross-section of Internet stakeholders, including its own At Large Advisory Committee, which told the ICANN Board that an ICANN that cannot "ensure competition and protect registrants from monopolistic pricing is not an ICANN worth retaining." In fact, the only proponents of the proposal throughout the ICANN approval process were VeriSign and ICANN itself.

*Loss of ICANN Oversight*

The .com deal also would further reduce ICANN's accountability to its own Internet constituents because it would remove any oversight of ICANN's funding sources. Registrars have approved, until now, the "Variable Accreditation Fee" that ICANN charges a registry

operator. However, the proposal would essentially remove even this partial oversight, allowing ICANN and VeriSign to agree on higher fees, thus increasing both of their revenues without broader review. In all, the increased fees from registrars and VeriSign that ICANN would collect over the next six years would approach at least $200 million, without review by anyone.

**The MoU should be the First Venue in Which Key Policy Issues are Resolved**

ICANN's failure to take into consideration the principles upon which it was founded – including accountability, transparency, and competition – comes at an important turning point for both the Commerce Department and ICANN.

The MoU with the Commerce Department that established ICANN is set to expire in September 2006. With this in mind, the Commerce Department has very recently undertaken an inquiry to solicit views on the transition of the technical coordination and management of the Internet Domain Name System to the private sector. This ultimate privatization is, in effect, the vision upon which ICANN was founded in the first place. The Commerce Department was given limited, hands-off overview of ICANN, with the exception of limited circumstances in which the DoC was given a direct role, including prior approval of contracts such as the .com domain registry agreement.

However, this transition was predicated on ICANN's ability to meet core values on its own, including stability; competition; development of bottom-up coordination; and representation of all in the Internet community. The Notice of Inquiry recently released by the Department of Commerce seeks public feedback on questions such as whether these principles are still relevant and whether new principles should be considered in the wake of technological advances and the global reach of the Internet, as well as the terms under which ICANN should establish relationships with registries.

Clearly, the original principles on which ICANN was founded remain more important than ever to ensuring viable Internet governance that is based on public policy considerations such as competition, transparency, and accountability.

As I have outlined in detail, the proposed .com agreement impedes the ability of ICANN to live up to these founding principles. However, the Commerce Department should first ensure that the broader policy considerations that are at issue regarding renewal questions over the MoU are addressed in the most comprehensive, publicly accountable way possible, which is through the inquiry process that the Commerce Department recently launched.

Were the .com agreement to be approved by the Commerce Department, in its present form, the future shape of the MoU would lose much of its relevance. Key policy questions, such as how ICANN can best remain on a path toward privatization in a way that safeguards the interests of the Internet community, would already have been decided in a .com agreement that would guarantee that accountability, transparency, and competition are discarded relics of ICANN governance, rather than the guideposts for the future of the Internet.

**U.S. Commitment to Sound Internet Governance Demands a Better Outcome**

The proposed settlement agreement also imperils continued U.S. leadership in Internet governance. In response to growing pressure from other nations to place governance of the Internet in an international body – perhaps even the United Nations – the United States has committed itself to effective, but "hands off," oversight of ICANN. Awarding a U.S. company a perpetual, unregulated monopoly to manage the .com domain name registry would severely undermine international confidence in the U.S. government's commitment to effective Internet governance – a fact powerfully confirmed by the recent letter from the Canadian Internet Registration Authority withdrawing its support for ICANN. The proposed settlement agreement must be revised to address international concerns that the U.S. government is using its oversight authority to further the interests of American companies at the expense of the global community of Internet users.

**ICANN should be Required to Fix Flaws**

Thus, it is critically important that the Commerce Department address each of these issues in their proper turn, by first answering the important policy questions at stake in the impending MoU renewal. The results of the Commerce Department's inquiry into these MoU issues will form the blueprint for how ICANN can meet the changing demands of Internet technology and policy considerations on a going-forward basis. Given the outcome of the United Nations' World Summit on the Information Society in Tunis in November 2005, these are questions of surpassing importance. This blueprint should then be used to provide guidance for resolving policy issues – including the competition concerns – that remain outstanding under the existing .com contract proposal.

In sum, the Department of Commerce must ensure that ICANN corrects the fatal flaws of the proposed .com agreement with the guidance that will flow from the resolution of policy decisions related to the MoU.

Mr. Chairman, I again express my gratitude to you for offering me this forum to express the policy concerns of the great many members of the Internet community, and I thank the Committee for its attention. Thank you again for the opportunity to appear before the Committee today. I would be happy to address any questions.

Statement of Steve DelBianco

Executive Director

NetChoice

Testimony before the

House Committee on Small Business

Hearing on

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

June 7, 2006

Chairman Manzullo, Ranking Member Velazquez, and distinguished members of the Committee: My name is Steve DelBianco, and I would like to thank you for holding this important hearing. I'm pleased to testify on how ICANN's new Registry contract affects small businesses that are increasingly doing their business online.

I serve as Executive Director of NetChoice, a coalition of trade associations and e-commerce leaders such as eBay, Yahoo, VeriSign, and AOL, plus over 18,000 small e-commerce retailers. At both the state and federal level, NetChoice advocates against regulatory barriers to e-commerce. NetChoice members are familiar with the process of registering their domain names, building websites, and conducting e-commerce as both buyers and sellers. We are also concerned with growing threats to internet security, so we appreciate the importance of fast and reliable resolution of domain names.

I also appear before you as a genuine "small business survivor." In 1984 I founded an information technology consulting firm, and grew it to $20 million in sales and 200 employees before selling the business to a national firm. After that experience, I was drawn to Washington to help start a trade association that focused on the needs of small IT businesses like mine.

The title of today's hearing poses a rather complex question, but the answer from small business is simple: *Small business needs an Internet that works.* Our customers and suppliers must be able to quickly and reliably get to our website, buy online, check the status of an order, or just find the address of our nearest store. We need security and stability, and we're willing to help pay the costs to get a secure and stable Internet.

**Internet Exposure and Commerce are Vital for Small Business**

Small businesses are more competitive and viable when they have an Internet presence. Over three-quarters of small businesses say their website generates leads and that their business enjoys a competitive advantage or stronger economic footing because they have a website.[1] Of those businesses that don't have their own websites, nearly all want customers to find their business address and phone number in online "yellow pages".

[1] Source: eMarketer

Online retailers realized $172B from consumer sales in 2005 and expect over $300B by 2010, according to Forrester. Consumers use the Internet not only for routine purchases, but also for banking and online bill payment. A Harris Interactive poll found that online bill payment is catching-up with paper, as 35% of consumers now pay bills online, compared to 37% who still pay by check.

As consumers become confident with online banking and buying, they grow to depend on a secure and reliable Internet. But small businesses feel a growing concern with threats to the Internet's security and stability.

**The Internet is Under Attack**

The Internet has seen at least seven major attacks in the past six years. Recent attacks have targeted domain name servers, then hijacked those servers to amplify and accelerate the attacks. This year, a distributed denial-of-service attack disabled 1,500 websites using 32,000 hijacked computers.[2] Symantec estimates that denial-of-service attacks rose 51 per cent in the second half of last year, averaging 1,400 attacks per day.

These attacks can cripple the website of a small business, and they are becoming more widespread and destructive. Moreover, small businesses are experiencing *blackmail* via denial-of-service attacks, where a business owner is forced to pay-up in order to stop the attack.[3]

Attacks on the domain name system are also harming online consumers. Attackers can redirect web browsers to fraudulent sites containing very convincing scams. Increased security measures can help, but hackers and scam artists are creative and adaptive with their tactics. The bottom line for small business is that our customers face increasing threats to their ability to access our websites and to buy online. Who do we look to for help?

**Who's Looking After the Security and Stability of Internet Domain Names?**

For purposes of this hearing, there are four players who have a stake in keeping the domain name system safe and reliable:

- **ICANN**—The Internet Corporation for Assigned Names and Numbers is responsible for coordinating the management of the technical elements of the

[2] DDoS attacks are conducted by controlling and compromising multiple computers—by the use of "zombies" or "bots"—to send a flood of queries against a targeted website. DDoS attacks generally overload the target's network with a high volume of traffic while simultaneously opening many web pages so that the site runs out of resources to handle legitimate requests. See http://www.symantec.com/avcenter/venc/data/ddos.attacks.html

[3] Daniel Thomas, "Websites face more attacks – BLACKMAIL" *Financial Times*, May 31, 2006.

Domain Name System (DNS) so that Internet users can access websites and route their email to the right place. ICANN enters contracts with businesses to operate the DNS and distribute domain names to users.

- **Registry Operators** — Businesses who maintain the database and systems to map domain names to their matching Internet addresses. Each Internet domain (.com, .org, .info, .net) is managed by a registry operator, under an exclusive contract with ICANN. Dot-com is operated by VeriSign, whose new registry contract is the subject of this hearing.
- **Registrars**—A business that resells domain names. GoDaddy and Network Solutions are among the largest registrars for the dot-com domain. There are 650 current dot-com registrars, which suggests there are no barriers to small firms seeking to enter the domain name registration business.
- **Domain name owners**—Individuals, businesses, and organizations who purchase domain names to establish their presence on the Internet.

While there are probably a few hundred small businesses operating as registrars, nearly all of America's millions of small businesses find themselves in the fourth category, as domain name owners. It's their perspective that we'll take in answering the question of whether ICANN's new registry contract poses any barriers to small business.

**Small Business is Willing to Pay for Better Security and Reliability**

At the same time the Internet is under attack, the volume of Internet domain-name queries is growing rapidly. A winning Internet security strategy calls for more than just a defense against known attacks and a readiness to repel new attack types. There must also be an investment plan to maintain and improve the Internet's performance under ever-increasing demands.

For small businesses, protecting their electronic storefronts is equivalent to buying surveillance cameras and hiring security guards for their physical locations. Companies already spend money on security for their own systems within their firewall. But security on the other side of the firewall is beyond their control. Small business needs—and is willing to help pay for—an Internet that is reliable and secure.

One criticism of ICANN's new registry contract is that domain name owners would face "unjust price increases" because annual fees may rise by less than $2 over the next six years[4]. From a small business perspective, this price increase would be a trivial matter compared to real concerns about the domain name system.

A national poll sponsored by the Association for Competitive Technology (ACT) found that small business owners widely consider their website domain name a good value for the

[4] John Berard of CFIT, in Warren's Washington Internet Daily, Vol. 7, No. 106, June 2, 2006, page 2.

money, and they place greater value on ensuring a higher-performing Internet than on keeping domain name prices low.[5]

Public Opinion Strategies conducted the poll just after ICANN approved its new dot-com contract. The poll focused on micro-businesses that are highly-sensitive to increased costs of doing business. More than half of the businesses surveyed had 3 or fewer employees and 87 percent had 10 or less.

62 percent of businesses preferred having a more reliable and better performing Internet, instead of keeping the cost of domain name prices low. The percentages are higher for businesses that rely heavily on the internet for e-commerce and communications, where 70 percent of respondents were more concerned about reliability. Eighty-four percent said that a less reliable Internet with slower speeds and periodic outages would have a negative impact on their business—including 56 percent who said it would have a major negative impact.

The message is clear—small business relies on the Internet for exposure and for e-commerce. Threats to the Internet security threaten their business. Small businesses would rather incur a small price increase for stability and security than face domain name disruptions.

## Small Business Sees No Barriers in the New Registry Contract.

This hearing is entitled "*Contracting the Internet: Does ICANN create a barrier to small business?*" It's clear that price is not a barrier to a small business seeking its own domain name. Polls confirm that small business values a secure and reliable Internet and is willing to pay a modest price increase for more of the same.

Another complaint discussed today is that an exclusive contract with a right to renewal creates a "perpetual monopoly" that poses a barrier to small business. When we examine this complaint from the perspective of small business, it's clear that the registry contract *must* be exclusive so that one vendor is responsible and accountable. And the renewal option is an appropriate incentive for the registry operator to invest in Internet security and stability.

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[5] See http://www.actonline.org/prdetail.aspx?PRID=60

***Registry Contracts Should be Exclusive Contracts***

Registrars and would-be registry operators complain that an exclusive registry contract creates a monopoly and denies the normal benefits of competition. However, this complaint loses its sting when you consider the nature of the services covered under this contract.

An exclusive contract is essential to focus responsibility and accountability on the vendor running a registry. The same is true for many outsourcing contracts that require accountability and consistency in the delivery of critical services, especially for infrastructure services that require significant investments.

For example, businesses typically select a single vendor to provide building security services. An exclusive contract keeps the vendor fully accountable for building security. A high-value, long-term contract could further motivate the vendor to invest in security systems and better employee training.

On the flipside, small businesses frequently seek contracts to become the exclusive vendor for a larger business customer. If selected, the small business typically invests significant resources to ramp-up its operations and capabilities to fulfill the contract requirements. Here in the Rayburn Building, you see everyday examples of exclusive agreements, for building maintenance and operation of the cafeteria downstairs.

***The Renewal Option is an Appropriate Incentive for Investment***

The renewal terms in ICANN's registry contracts are being criticized as anti-competitive. But those making the complaint ought to know better. Renewal options are actually common in longer-term service contracts to provide incentives for making investments that improve contract performance.

There are many forms of the renewal option in ICANN's registry contracts. The operators of the cafeteria downstairs might invest in a new grill or espresso machine if they're confident that their contract would be renewed upon expiration. Landlords often give tenants a purchase option as an incentive to maintain and improve the property.

I have some first-hand experience with service contracts, since my own business was selected to provide software help-desk support for a large credit card company. I invested heavily in hiring and training help-desk staff, rented new space for the operation, acquired new computers and an integrated call management system. We even bought electronic scrolling sign boards to alert the staff about callers in the queue and hold times.

To have any hope of recovering this huge up-front investment, I insisted on renewal terms that gave us a favorable chance to renew the contract after its initial term. To earn the renewal, we had to satisfy several metrics for service levels. In addition, we could not have any sustained failures to meet new or emergency initiatives that could be expected over the term of the contract. "Best efforts" wouldn't be good enough—we had to be able to recover and deliver if unexpected call volumes hit us out of the blue.

My experience is fairly typical, and tells me that ICANN is right to include a renewal option in its registry contracts. While a renewal option helps the incumbent to retain the contract upon expiration, the incumbent will lose the contract if it fails to satisfy the functional requirements in the new contract.

The performance requirements ICANN has set to earn renewal are imposing, especially when you consider the open-ended responsibilities imposed on the registry operator. Contract sections 3.1(a) and (b) require the Registry operator to meet any future "consensus policy" adopted by ICANN to improve security and stability and to resolve disputes about domain names.

Small business appreciates ICANN's anticipation of new security and stability challenges, and we appreciate ICANN's ability to negotiate such open-ended requirements into its registry contract. While such open-ended obligations could be very difficult for any operator to fulfill, NetChoice would be among those arguing against renewal if an incumbent registry operator failed to meet the contract's performance requirements.

To summarize so far, a renewal option is appropriate for ICANN's registry contracts, since small businesses want ICANN and its registry operators to spend whatever it takes to address the stability and security of the Internet's domain name systems. And the discussion above counters complaints about exclusivity and the domain name price increases allowed in ICANN's proposed registry contracts. Below, we suggest the real motivation behind the complaints of a few businesses, and conclude with a discussion of what really concerns small business about the domain name system.

***Loss of Leverage is What's Really Bothering the Big Registrars***

As noted above, small business isn't concerned about a $2 increase in domain name fees, and nothing about ICANN's new registry contract presents any barriers to the small businesses that rely on the domain name system for their websites, e-commerce, and e-mail. So, what's really behind the complaints that motivated this hearing? I suggest the real issue

is that a few large registrars will lose some of their leverage over ICANN once the new contract takes effect.

As I understand it, the largest domain name resellers, or registrars, currently exercise control over ICANN's budget, and thereby influence ICANN policies that affect how the resellers do business. Resellers have this control because ICANN must obtain their approval to assess the "Registrar Variable Fee" that provides for most of ICANN's funding. I find this perplexing, since businesses and consumers are paying these fees for their domain names, yet resellers can withhold our fees from ICANN in order to give themselves leverage and control over ICANN policies.

In that regard, these resellers act like a legislative appropriations committee. ICANN cannot fund its operations or make significant policy changes without the approval of domain name resellers.

Moreover, the current ICANN funding agreements require that two-thirds of the registrars must approve the fees they will pay to ICANN, which gives even more control to a few of the largest registrars. This has forced ICANN management to make concessions to the largest registrars in exchange for their approval to fund ICANN. I attended the ICANN meeting in Vancouver last December, where the chair of ICANN's Finance Committee complained that ICANN expenditures were being delayed and possibly diminished because registrars had not yet approved the fees in the budget that was adopted for 2005-06.

ICANN's new registry contract, however, would reduce some of the leverage held by the large registrars, since the registry operator would be contributing a greater share of ICANN's fees. ICANN wants this change for dot-com and for all future registry contracts, since it would increase operating revenue while decreasing the leverage of large resellers with their own agendas. Moreover, ICANN is anxious to demonstrate to the world community and to the U.S. government that it is independent and adequately funded by guaranteed revenue—with no strings attached.

When they make decisions and investments to ensure the Internet's security and stability, ICANN and its registry operators <u>should not</u> be held-up by registrars who have little interest in either security or stability. Registrars compete via branding campaigns and by running users through a gauntlet of value-added services (some of dubious value). Their relative competitive position is not affected by domain name performance since all registrars resell the same batch of domain names.

If ICANN and its registry operators have to beg a "permission slip" from registrars for every security investment, the Internet infrastructure will not be as responsive to new threats and the demands of growing traffic. The approval process would be painfully slow, and integrated technical proposal would be picked-apart by conflicting stakeholders.

From all appearances, the loss of some registrar leverage is why Network Solutions and GoDaddy have pushed the Committee to hold this hearing. They, like resellers in many industries facing change, don't want to lose any of their leverage on wholesalers and manufacturers. However, ICANN needs to reduce the leverage held by resellers, and the new registry contract terms do just that.

## What Really Concerns Small Business? *Domain Name Abuses and the Specter of the UN Taking Control of the Internet.*

Small businesses have little concern about modest price increases for domain names when that money goes towards Internet security and stability. And none of the complaints about the registry contract present barriers to small businesses that use the Internet. Since the Committee seeks to know what concerns small business about the business of domain names, we turn now to our two real concerns: abuses of the domain name system; and the idea that the United Nations has designs on "governing" the Internet.

### Abusive Internet Practices Harm Small Businesses

While ICANN's registry contract addresses security and stability, there are other important concerns for small business. The domain name arena is fraught with abusive, fraudulent and unfair practices that hurt small businesses. These practices decrease the value and increase the cost of domain names and are misleading to potential customers.

#### *Cybersquatting*

Cybersquatting occurs when speculators buy domain names that are closely related to the names of other businesses, with the intent to sell these domain names at a big markup over the actual registration cost. Victims of cybersquatting can sue under a 1999 federal law known as the Anti-Cybersquatting Consumer Protection Act, and can initiate arbitration proceedings under the authority of ICANN.

For a small business, the time and expenditures necessary to understand and assert these legal remedies are often more than the owner can afford. Consequently, most small

businesses either continue to lose prospects to cybersquatters, or are conned into paying ransom for the related domain name.

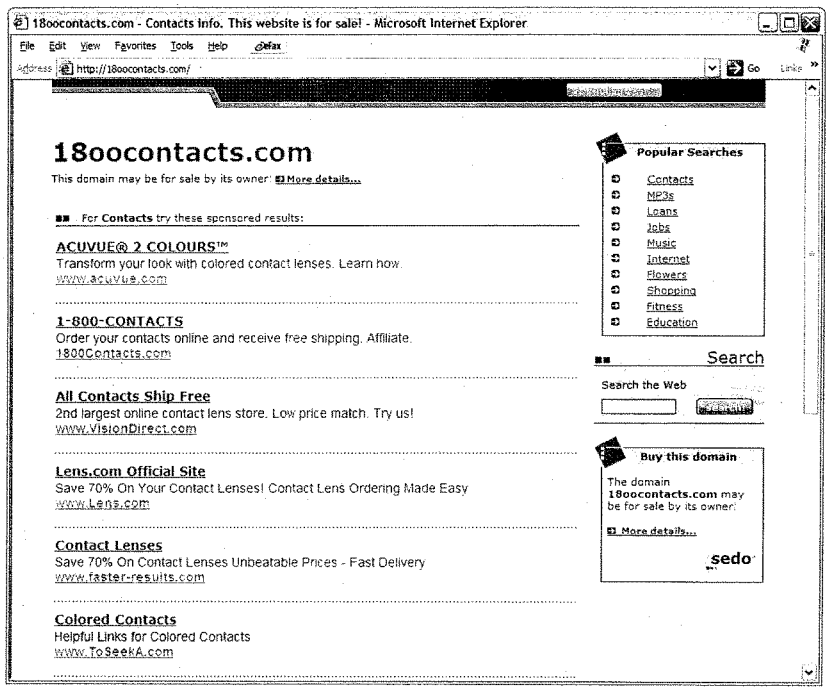
***Parking***

A "parked" website is one that closely resembles a popular domain name, but is designed to exploit a user's misspelling or typographical errors. Small business is harmed when its potential customers are misled by these sites. Based solely on traffic generated by user errors, parking sites earn easy money when users click on ads displayed on the page.

For example, I tried a few typographical variations on 1800Contacts.com, the leading telephone and online seller of replacement contact lenses, and a NetChoice coalition member. If I type 18OOcontacts.com instead of 1800contacts.com (letter O instead of numeral zero), I arrive at a page designed to steer me into buying contacts from competing lens sellers.

18OOcontacts.com points to a server owned by Sedo, the current leader in "Parking" domain names.[6] Sedo's parking site is designed to generate ad revenue when users who intended to go to 1800Contacts start clicking on sponsored links—*for other lens sellers.* (screen capture shown below).[7]

[6] For information about Sedo, see http://www.sedo.co.uk/about/index.php3?tracked=&partnerid=&language=e
[7] See http://www.18oocontacts.com/




When I click on the 1800Contacts.com link that often shows on this page, I am re-directed to yet another page showing ads for other lens sellers. In other words, the hyperlink for 1800Contacts.com is falsely labeled in order to generate.

Parking sites confuse and divert potential customers. 46% of users prefer to type the domain name of a known website directly into the browser's address bar.[8] But when typos happen, legitimate businesses shouldn't lose customers who fall into traps designed to generate ad revenue. What's more, the ad revenue generated by parking drives up the price if the intended business tries to acquire the domain from the parking operator.

***Expiration Extortion***

"*Expiration Extortion*" describes a common Registrar practice of forcing a domain owner to pay an exorbitant ransom to reinstate a name that's been allowed to expire. GoDaddy, for instance, informed me that for $80 they would reinstate a domain name for

[8] North America Domain Name Study, Windward Directives, June 2005.

which I had paid GoDaddy only $8 to initially register. *Expiration Extortion* also describes the speculative game of snatching expiring domain names for resale to their former owner – or to the highest bidder.

Domain names are generally registered only for a year, although most owners renew before the year is up. Among all registrants, the average term for domain registration is 1.3 years.[9] Last year, the renewal rate for dot-com and dot-net domain names was 75%. That means 25% of names aren't renewed, so every day there's an average of 22,000 expiring domain names released by registries.

A company called Pool.com has perfected the science of snatching domain names as they expire, or "drop". Pool runs 80 servers in Sterling, Virginia that fire into action every day when dropped domain names are released at 2pm. According to Pool.com's president, Taryn Naidu, "*It's like going to the horse races every day.*"[10] The race is won by whichever company, blasting multiple commands per second, snatches the dropped domain name.

Imagine if Pool.com were in the business of buying expired auto registrations instead of expiring domain names. Pool could snag your car registration if you failed to renew it by the expiration date, then sell the registration back to you or to another bidder who's willing to pay more.

Small businesses are increasingly frustrated and concerned about abusive domain name practices like parking, cybersquatting, and expiration extortion. ICANN acknowledges these concerns in the Covenants of its new Registry Agreement, where it indicates the potential for "prohibitions on warehousing of or speculation in domain names by registries or registrars."[11]

Next, I'll describe an even more frightening threat to the future of the Internet; a threat that may be fended-off if ICANN's new registry contracts help it become stronger and more independent.

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[9] ASCII Com/Net for Q1 2006

[10] As quoted by Peter Hum, "The New Cybersquatting: What'$ in a Name," The Ottawa Citizen, March 16, 2006.

[11] Draft Registry Agreement, Section III.1(b), page 4, at http://www.icann.org/topics/vrsn-settlement/revised-com-agreement-clean-29jan06.pdf

***The Internet Needs a Manager, But the UN Wants to be Governor***

There's a growing risk that ICANN's technical role for managing domain names would be usurped by the United Nations. The World Summit on the Information Society (WSIS), a UN agency that studies technological development, met last November in Tunisia to discuss Internet Governance. The UN Working Group on Internet Governance (WGIG) released a report last June that included controversial policy recommendations for the future of the Internet. Thanks in part to a unified message from Congress, representatives from the broader international community agreed to let ICANN continue managing the Internet under U.S. oversight – for the time being.

Truth is, the Internet needs a manager—not a governor. ICANN has a limited technical role and works with private sector interests who have invested a trillion dollars to bring Internet connections to over a billion people around the world.

Governments, on the other hand, are too ready to regulate when problems arise, have an unlimited appetite for expansion, and are accustomed to the powers of taxation. Imagine an expanding ICANN, under pressure from worldwide governments, using the Internet to advance a range of social welfare programs. A tax, or "contribution," would be levied on domain names to fund programs to "bridge the digital divide" and promote local content.

While ICANN is far from a perfect manager, it provides the needed separation between Internet technical operations and governments. According to the Center for Democracy & Technology, ICANN's bottom-up coordination of technical functions is the best way to preserve the democratic and decentralized character of the Internet.

If there's anything that everyone at today's hearing should be able to agree upon, it's that we need ICANN to be strong and independent so it can fend-off interference from the UN and from governments. The new dot-com contract provides ICANN with enough revenue to perform its technical role and resist influence from governmental bodies – including the U.S. government. We should focus our efforts on how to stabilize and strengthen ICANN, not second-guess its contracts for technical operation of the Internet.

**Conclusion**

ICANN is a work-in-progress on the way to a bold and optimistic vision. I can think of no precedent for a multi-national, public-private partnership to manage an enterprise as complex and dynamic as the Internet. ICANN has made progress in its 7 year history, but it needs more financial and operational independence to meet its mandate for a secure and reliable Internet.

The Internet has become an irresistible target for hackers, criminals, and unfair or deceptive practices, all of which are concerns to small business that rely heavily on their websites, e-commerce, and e-mail services. Small businesses are understandably upset when our customers are confused or diverted, when our domain names are held for ransom, and when we hear the UN seeks to control the Internet.

ICANN's new Registry contract provides incentives for a strong defense against these threats, and incentives to improve performance of domain name services. Moreover, it provides ICANN with adequate and reliable revenues to react to new security threats while managing challenges brought on by the Internet's exponential growth.

Compared to these real concerns, the complaints that provoked today's hearing are inconsequential distractions that do not nearly warrant Congressional interference with ICANN's effort to adopt a new registry contract. I close by thanking the Committee for considering the concerns of small business about the domain name system, and I look forward to your questions.

Statement of Craig Goren

Chief Executive Officer

Clarity Consulting

Testimony before the

House Committee on Small Business

Hearing on

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

June 7, 2006

Chairman Manzullo, Ranking Member Velázquez, thank you for inviting me to testify here today on the subject of "Contracting the Internet: Does ICANN create a barrier to small business?"

My name is Craig Goren, I am the Chief Executive Officer of Clarity Consulting, a Chicago-based software development firm that specializes in building scalable, high-end, transactional web-based systems. Additionally, I am the founder of CenterPost, a small business that provides automated customer-messaging solutions. CenterPost services manage the delivery of time-critical email, wireless, and fax messages from large businesses to their customers; including flight status alerts, insurance claims notices, appointment confirmations, and late payment reminders. CenterPost has delivered more than two hundred million messages on behalf of customers like United Airlines, Wells Fargo, and The Weather Channel.

Today, the Internet is as essential as the phone, the fax and overnight delivery. Name resolution, a technical term for the service provided by the registries, is ultimately what puts your address on the internet. So when DNS goes down, not only websites go down, but ATM machines, on-line payment systems, email – critical infrastructure. If there is a problem with DNS you become invisible. My clients can't afford to be invisible, even for a minute.

With Clarity Consulting, we are building the next generation of applications for business. We all see that the future of computing happens not in a discrete space on one computer's hard drive and desktop, but as part of a system of applications that are available on any device, anywhere, any time. For these future activities, the core infrastructure underlying the internet is, literally, everything.

## Small Business Needs Stability and Security

Let me state this up-front and very clearly: My industry absolutely depends on a secure, stable internet to provide our products and services. A key element of that stability is knowing that your customer can find your website every time he or she tries, simply by typing in your website name. Whatever the cost, business must be able to count on the network simply working. At CenterPost, network uptime must be so close to 100% that the difference is undetectable. If it isn't, people miss their planes, bounce checks, and fail to bring a raincoat.

Mr. Chairman, your hearing today asks questions about the barriers to small business, but the biggest barrier we fear is our inability to reach our customer. We depend on fast, accurate returns for DNS queries, from anywhere in the world. CenterPoint has delivered more than 200 million messages; that's 200 million times we've asked the domain name infrastructure to resolve an address, and we're a small business. For the world as a whole, the failure of the DNS system for even an hour would be economically devastating. Consider that in December of 2004, Amazon averaged 32 sales per second, or 2.8 million items in one day. While Amazon's scale is something most small businesses would like to see, the bottom line is downtime can be devastating.

Cost of Downtime

The dangers of downtime extend beyond reaching customers. The cost of Internet downtime impacts worker productivity. At Clarity Consulting, we help businesses create web-based solutions. Were the web to fail, a whole cascade of costly failures would result to:

**Business applications:** Key applications used by large numbers of employees or applications that are critical to day-to-day operation of the company;

**Technology services**: E-mail, Internet and intranet, technology tools such as automated report distribution, and automated data interfaces that improve employee productivity;

**Technology infrastructure:** Key servers, LANs, and WANs.

And these failures would occur based on today's Internet. There are literally hundreds of new and different uses for the Internet popping up daily; services like instant messaging, VOIP, blogs, Wi-Fi and 3G networks create increased complexity. In most businesses, when complexity increases, so does cost. I am frankly surprised that prices aren't increasing more in order to maintain quality of service, even considering economies of scale.

<u>[illegible]crease is Inconsequential</u>

[illegible]derstanding that ICANN is including a provision for a possible $1.86 cost increase over the next six years to reinforce the infrastructure and enhance security. By 2012, this increase would push the registration fee up to a heart pounding <u>$7 bucks per year</u>. When you compare that to the millions lost in opportunity cost per hour of downtime, discussing the price increase hardly seems rational.

Large companies spend millions of dollars to build out infrastructure in order to protect themselves from failures of the DNS system. When you are small, you don't have the resources to protect yourself, so you rely on the registrars to provide your DNS resolution. As someone who has many customers who depend on DNS, I can tell you that we regularly face DNS issues, and these issues always stem from a failure at the registrar, not the registry.

Don't use small business as an excuse to get Congress involved. I would be happy to pay an extra $7 dollars a year to guarantee better service.

In fact, the low cost of owning a domain name is what helps drive the popularity of "auto renewal" services, 10 year registrations, buying multiple domains "just in case," and other services provided by many of the registrars. Those types of products only exist because

the cost of that portion of the service in comparison to the importance of its stability is miniscule.

**Bluntly put, if the $1.86 goes to keeping the system reliable, then it's money well spent.**

In addition to the price increase, one of the other "barriers" to small business might be the opportunity to compete to provide the service. Frankly, the Internet has grown beyond something that can be hosted on one computer under a desk at Network Solutions. Running .com and the A-Root requires multiple sites around the world, each with extraordinary infrastructure and security features. To provide the needed stability would require a level of investment and financial backing most small businesses simply don't have. As much as I personally embrace the entrepreneurial spirit, I don't want "Bob's ISP" providing the domain name resolution for .com or any other TLD.

I'm not an expert on domain name resolution, but I service clients that have th[illegible]ands, if [illegible]dred[illegible] of thousands, of users. The true bar[illegible]er to being a registry is not [illegible]tractual, and [illegible]egulatory, it's technical. A registr[illegible]s hundreds o[illegible]rs. I trust th[illegible]N knows this, and that's why it s[illegible]ured t[illegible]ot-com[illegible]o promote [illegible]logy [illegible]ment by the company t[illegible]el is t[illegible] the [illegible]am [illegible]mply[illegible] eriSign is the only [illegible] w[illegible] could [illegible] hey have [illegible]ost [illegible] provi[illegible]ng [illegible] alwa[illegible] [illegible]s to spend [illegible]y t[illegible] wa[illegible] Whatever ICANN [illegible] Commerce decide [illegible]ution [illegible]ision that [illegible] a buck above [illegible]ility.

**Long Term Spen[illegible]** **Long Term Co[illegible]**

I am not intimately involved in th[illegible] being discussed here today, but I am very familiar with the nee[illegible]unt on contract renewal. As a seller of services, I expect to be held to a specified service level by my client. Every

Service Level Agreement (SLA) outlines the scope of work and terms spelling out a success. But with success should come reward, and I expect that my contract will be renewed so long as I meet the terms of the SLA. This concept is the cornerstone of every long-term business relationship: Do a good job, and I'll continue to hire you.

As a business, I can't create the efficiencies necessary to provide my buyer with good value unless I have reasonable assurances that the relationship has long-term viability. Whether it's a consulting contract that allows me to lower fees in exchange for a lower cost of sale and higher utilization, or even more substantially and more relevant to this case, the assuredness of continued business that allows me to make the substantial capital infrastructure investment. These costs must be amortized and inevitably paid out well ahead of the fees in order to provide the Quality of Service any buyer will insist upon starting on the first day of the contract. Without some assurance of a long term relationship, what incentive does a business have to risk up-front capital, only to have a bidding war every few years, where track record counts for very little?

As business leaders, we strive to provide excellent service, such that our clients never feel that they are forced to initiate an entire round of proposal requests and analysis to a company to replace us. This is ICANN's goal as well. If ICANN is the customer, then they know that the cost of changing vendors is not just monetary, it also affects service quality. Given the unique role ICANN plays in managing the technical aspects of the Internet, any transition in Registry service will have significant risks for service quality—and as we discussed above, the costs to a service interruption are truly monumental. I would assume that ICANN is taking the "smart buyer" view that "if it ain't broke, don't fix it."

As a buyer, I want to see a commitment that is foundational, not a relationship built from glossy brochures and assurances. A renewal provides a foundation for accountability. The smart buyer knows if the vendor screws up services, especially infrastructure, the contract recourse is inconsequential—the cost to the buyer's customers/consumers (small business and the general public in this case) is orders-of-magnitude higher than the

original service cost. Again, "If it ain't broke, don't fix it". Why? Because the risk introduced in "fixing" it regularly has such a high cost.

So if the seller of services depends on having some expectation of renewal to make spending decisions, the smart buyer of services does not sign contract this critical (e.g. the whole .com domain's service level!) without making sure the vendor has a lot at stake.

As a small business and consumer, I WANT my registrar's registry, and all its stockholders, presumptively thinking they are entitled to our business, and scared out of their mind that if they screw up they lose all that forecasted revenue.

I want to take a moment to speak out against the ridiculously deceptive and perverse misuse of the term "monopoly". This is simply a contract with a renewal for .com, which anyone who calls a "monopoly" would then also have to call any other contract a "monopoly", like they way your landlord has a "monopoly" on your habitat which you can't shop around unless he/she under-performs. If we allow this absurd definition to stand, every service provider is a 'monopolist', regardless of industry or size. The only 'monopoly' here is ICANN, and its role as sole decision-maker is key to the stability we all seek.

Mr. Chairman, on behalf of small businesses everywhere, I urge you to make certain that the interests of the broadest swath of industries are protected, not just the narrow group of competitors who may be seeking government assistance for competitive advantage. Any decision ICANN and our Department of Commerce makes should take into account the need to preserve stability and security of the Internet ahead of everything else. The consequences of an Internet outage caused by VeriSign under-spending, or a new Registry taking over the reins, are enormous. One last time: "If it ain't broke, don't fix it". We are counting on you to make sure ICANN isn't forced to 'break it', just because the fix is in for others.



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