

**IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS BEFORE THE
INTERNATIONAL CENTER FOR DISPUTE RESOLUTION**

NAMECHEAP, INC.

Claimant

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,

Respondent

ICDR Case No. 01-20-0000-6787

WITNESS STATEMENT OF RUSSELL WEINSTEIN

14 January 2022

I, Russell Weinstein, declare as follows:

1. I am Vice President, Global Domains Division (“GDD”) Accounts and Services for the Internet Corporation for Assigned Names and Numbers (“ICANN”). I have personal knowledge of the matters set forth herein and am competent to testify as to those matters. I make this declaration in support of ICANN’s Pre-Hearing Brief on the Merits.
2. As Vice President, GDD Accounts and Services, I lead the GDD Accounts and Services team responsible for supporting the global network of gTLD registries and ICANN accredited registrars. In 2018 and 2019, my titles were Director, Registry Services and Engagement; then Senior Director, Registry Services and Engagement; then Senior Director, gTLD Accounts and Services. In those roles, I managed the negotiations and overall process regarding the renewal of the .BIZ, .INFO, and .ORG Registry Agreements, executed on 30 June 2019. This included communicating with the respective registry operators. I joined ICANN in October 2012 to help support the New gTLD Program.

Development of the Base Registry Agreement

3. ICANN launched the New generic Top-Level Domain (“gTLD”) Program in 2012 (the “Program”), through which interested applicants could apply to operate new gTLDs that did not already exist in the Domain Name System (“DNS”). I understand that one of the goals of the New gTLD Program was to increase consumer choice, diversity, and competition in the DNS through implementation of the community-developed policy. In conjunction with the New gTLD Program, ICANN published the New gTLD Applicant Guidebook (“Guidebook”), which sets forth the evaluation procedures for new gTLD applications. The Guidebook includes a draft of the Base gTLD Registry Agreement (“Base Registry Agreement”), which was to be applicable to all new gTLDs delegated pursuant to the Program. The Base Registry Agreement comprises an agreement between ICANN and the respective registry operators governing the operation of the applied-for gTLD.
4. My understanding is that gTLDs delegated into the root zone prior to the Program were subject to non-uniform registry agreements, and the intent with the Base Registry

Agreement was to ensure consistency across gTLD registry operators and to avoid inefficiencies associated with negotiating, administering, monitoring, and enforcing hundreds, if not thousands, of different agreements.

5. The Guidebook and the Base Registry Agreement were drafted with significant input from the Internet community through ICANN's bottom-up, multistakeholder process, over a multi-year period. ICANN published a draft of the Base Registry Agreement with the first version of the Guidebook in 2008. The Guidebook was then subject to multiple rounds of public comments and revisions until the final version of the Guidebook was published in June 2012.
6. ICANN continued revising the version of the Base Registry Agreement included in the June 2012 Guidebook throughout 2013, including opening additional public comment periods and revising the agreement pursuant to the comments received as necessary. The final version of the Base Registry Agreement was published in July 2013 (although minor revisions have been made with community input since then).
7. The Base Registry Agreement contains multiple safeguards and security and stability requirements that I understand are oftentimes more robust than the protections afforded by registry agreements that are not premised on the Base Registry Agreement, which include the prior versions of the .BIZ, .INFO, and .ORG Registry Agreements. For example: the Base Registry Agreement requires registry operators to contract only with registrars accredited under the 2013 Registrar Accreditation Agreement, which provides safeguards and enhancements for registrars and registrants that were not included in prior versions of the Registrar Accreditation Agreement; the Base Registry Agreement includes additional public interest commitments, which are subject to enforcement by the Public Interest Commitment Dispute Resolution Procedure; and additional protections of third parties' legal rights and certain rights protection mechanisms, such as the Uniform Rapid Suspension system, the Trademark Post-Delegation Dispute Resolution Procedure and the Registration Restrictions Dispute Resolution Procedure, are included in the Base Registry Agreement.
8. The Base Registry Agreement does not contain a price control provision, but it does offer

substantial pricing protection to registrars (and therefore registrants) for both initial and renewal domain name registrations, including requiring registry operators to provide advance written notice to registrars of any decision to increase prices and providing registrars the right to lock in prices for up to ten years.

9. To my knowledge, every single new gTLD operates pursuant to the Base Registry Agreement, and most without any modification. Therefore, the Base Registry Agreement currently applies to the over 1,200 gTLDs in the DNS.

Transition of Legacy gTLD Registry Agreements to the Base Registry Agreement

10. The ICANN Board has delegated to the ICANN organization (meaning ICANN staff) the authority to manage the day-to-day operations of ICANN, with the Board's oversight. This includes the authority to enter into contract negotiations with registry operators and other third parties. As a result, ICANN staff has entered into thousands of agreements, renewals, amendments, and addendums with third parties. Nevertheless, the ICANN Board is always available to consult with or advise ICANN staff as necessary, depending on the circumstances of the renewals.
11. Pursuant to this authority, and after the Base Registry Agreement was finalized, my team and I discussed transitioning to the Base Registry Agreement with the legacy gTLD registry operators when their registry agreements were up for renewal. Transitioning these agreements to the Base Registry Agreement was ICANN's preference because it ensured consistency across all registry operators so that legacy gTLDs operated under the same agreement as all of the new gTLDs. Similarly, many of the legacy registry operators also preferred to transition to the Base Registry Agreement when their agreements were up for renewal.
12. Renewal of the registry agreements, however, involve bilateral negotiations between ICANN and the respective registry operators. Certain registry operators have chosen not to transition to the Base Registry Agreement for various business reasons, despite ICANN's preference. As a result, there is a small handful of legacy gTLD operators that have not adopted the Base Registry Agreement. One such example is Verisign, the

registry operator for .COM, .NET, and .NAME, which chose not to transition to the Base Registry Agreement during the latest negotiations of its .NET and .NAME registry agreements.

Transition of .BIZ, .INFO, and .ORG Registry Agreements to the Base Registry Agreement

13. The 2013 Registry Agreements for .BIZ, .INFO, and .ORG (“2013 Registry Agreements”) were set to expire in June 2019. In anticipation of their expiration, in or around May 2018, my team and I began negotiations with the .BIZ, .INFO, and .ORG registry operators, as we had done with other legacy gTLD registry operators. At the outset of the negotiations, each of the .BIZ, .INFO, and .ORG registry operators were interested in and/or requested to transition to the Base Registry Agreement.
14. As we were negotiating with the registry operators, my team and I performed our own deliberations and due diligence regarding whether transitioning the agreements to the Base Registry Agreement made sense. We discussed the .BIZ, .INFO, and .ORG Registry Agreements at several ICANN staff meetings—which often included ICANN’s in-house counsel—and had additional discussions with ICANN’s in-house counsel during which we requested and received legal advice. I will not disclose the substance of the legal advice sought or provided to avoid waiving the attorney-client privilege.
15. My team and I considered numerous factors prior to reaching our decision to transition the .BIZ, .INFO, and .ORG Registry Agreements to the Base Registry Agreement. For example, my team considered:
 - a. ICANN’s goal of treating the .BIZ, .INFO, and .ORG registry operators equitably with the operators of new gTLDs and other legacy gTLDs, as well as treating the new gTLD registry operators equitably with legacy gTLD registry operators;
 - b. That transitioning to the Base Registry Agreement would ensure consistency for registries, registrars, and registrants, and provide increased operational efficiencies for ICANN and for the DNS industry as a whole;

- c. That the Base Registry Agreement was drafted with the Internet community and contained a number of safeguards and security and stability requirements that were more robust than the 2013 Registry Agreements;
- d. The fact that the Base Registry Agreement affords registrars protection from a pricing perspective through advance written notice of any price increases and the opportunity to lock in pricing for up to 10 years (protections that, hopefully, registrars would pass along to registrants);
- e. The way in which the domain name marketplace has evolved and matured since ICANN's inception, from just a few TLDs in the early 2000s to over 1,200 gTLDs today, along with hundreds of country code top-level domains ("ccTLDs");
- f. The .BIZ, .INFO, and .ORG registries do not possess a significant market share of total domains, collectively accounting for approximately 5% of the total domains under management in the DNS at the time, including ccTLDs;
- g. The lack of any mandate from a governmental or regulatory authority regarding pricing for these registries, as there is for the .COM registry, and the fact that ICANN is not a price or competition regulator and should not be required to monitor the prices that registry operators charge registrars for registrations in these gTLDs; and
- h. How the concepts of price control and price protection were considered by the community during the development of the Base gTLD Registry Agreement for the New gTLD Program.

16. All of these factors combined led my team and I to conclude that transitioning the .BIZ, .INFO, and .ORG Registry Agreements to the Base Registry Agreement was the appropriate course of action and in the public interest. We continued negotiating with the respective registry operators accordingly.

17. The negotiations between my team and the respective registry operators occasionally occurred via email or in person, but the majority of the negotiations occurred via telephone. Each of the respective registry operators agreed that transitioning to the Base Registry Agreement was the preferred way forward. Thus, the negotiations did not focus on removal of the price control provisions because our team and the registry operators were all of the same opinion that the .BIZ, .INFO, and .ORG Registry Agreements should transition to the Base Registry Agreement, which does not have any price control provisions. As such, there was nothing to negotiate on this topic. In fact, I recall very few telephone conversations or emails that discussed price control provisions with regard to the .BIZ, .INFO, and .ORG Registry Agreements. Rather, the starting point for the negotiations was the Base Registry Agreement, not the 2013 Registry Agreements; so the negotiations focused on modifications to the Base Registry Agreement that our team or the registry operators believed appropriate considering these TLDs already existed on the Internet, such as several provisions in the Base Registry Agreement that focus on requirements for the initial delegation and introduction of a gTLD. Draft agreements exchanged with the respective registry operators thus did not contain any price control provisions or changes to those provisions, because no such provisions existed.
18. During the negotiations, I understand that ICANN staff provided a briefing to the ICANN Board at a Board workshop session in January 2019, although I did not attend that workshop. My understanding was that the Board was supportive of the recommended transition of the .BIZ, .INFO, and .ORG Registry Agreements to the Base Registry Agreement. Given that, my team and I maintained our plan to transition the .BIZ, .INFO, and .ORG Registry Agreements to the Base Registry Agreement, and we engaged in the next step in our process.
19. My team and I then opened a public comment period for each of the .BIZ, .INFO, and .ORG gTLDs to seek input from the Internet community regarding the proposed renewals of each registry agreement. As part of this process, we publicly identified the provisions in the proposed renewal agreements that were materially different from the 2013 Registry Agreements, including those relating to price controls. In addition, we detailed the steps that we would take following the public comment process, namely that we would review

and analyze the public comments and consult again with the ICANN Board.

20. We followed those steps. After receiving the public comments, my team and I fully considered them. My team analyzed and summarized the public comments and noted the areas of concern expressed through the public comments.
21. With respect to the lack of the price control provisions, though many comments advocated for including them in the .BIZ, .INFO, and .ORG renewed registry agreements, some favored the transition to the Base Registry Agreement without such price control provisions. My team was also aware of at least one public campaign to enlist comments to ICANN against the lack of price control provisions and noted that many comments that advocated for keeping price control provisions seemed to be form or template comments, as they were substantively identical.
22. After reviewing and analyzing the comments, my team and I determined that our original recommendation of transitioning the .BIZ, .INFO, and .ORG Registry Agreements to the Base Registry Agreement was still the appropriate path forward. My team and I prepared a Report of Public Comments for each gTLD (collectively, the “Reports”) reflecting our summary, analysis, and conclusion. We published those Reports for the Internet community. As to the price control provisions, we explained in the Reports:

There are now over 1200 generic top-level domains available, and all but a few adhere to a standard contract that does not contain price regulation. Removing the price cap provisions in the .biz[, .info, and .org] Registry Agreement[s] is consistent with the Core Values of ICANN org as enumerated in the Bylaws approved by the ICANN community. These values guide ICANN org to introduce and promote competition in the registration of domain names and, where feasible and appropriate, depend upon market mechanisms to promote and sustain a competitive environment in the DNS market.

Aligning with the Base gTLD Registry Agreement would also afford protections to existing registrants. The registry operator must provide six months’ notice to registrars for price changes and enable registrants to renew for up to 10 years prior to the change taking effect, thus enabling a registrant to lock in current prices for up to 10 years in advance of a pricing change. Enacting this change will not only allow the .biz[, .info, and .org] renewal

agreement[s] to conform to the Base gTLD Registry Agreement, but also takes into consideration the maturation of the domain name market and the goal of treating the Registry Operator equitably with registry operators of new gTLDs and other legacy gTLDs utilizing the Base gTLD Registry Agreement.¹

23. In any event, we publicly committed to (and did) consult with the ICANN Board a second time in June 2019 at a Board workshop session, which I attended. ICANN's in-house legal department was integrally involved in this discussion, and I will not disclose the substance of the legal advice sought or provided so as not to waive the attorney-client privilege.
24. My team briefed the ICANN Board regarding the status of the negotiations and the outcome of the public comment periods. We shared our analysis regarding the public comments and also detailed our rationale for transitioning the .BIZ, .INFO, and .ORG Registry Agreements to the Base Registry Agreement, notwithstanding the existence of public comments that opposed this proposal. We did not request formal approval, a decision, or a resolution from the Board, but the Board was supportive of our recommended course of action.
25. Following this briefing, my team and I proceeded as planned with executing the .BIZ, .INFO, and .ORG Registry Agreements, consistent with the authority the ICANN Board delegated to ICANN staff to, among other things, negotiate and execute registry agreements.

I swear under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 13th day of January 2022 at Los Angeles, California.

By: *Russell Weinstein*
Russell Weinstein

¹ See Annex 5, at p. 8; Annex 6, at p. 7; Annex 7, at pp. 6-7.