

Reconsideration Request Form

Version as of 21 September 2018

ICANN's Board Accountability Mechanisms Committee (BAMC) is responsible for receiving requests for reconsideration (Reconsideration Request) from any person or entity that has been adversely affected by the following:

- (a) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);
- (b) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or
- (c) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or Staff's reliance on false or inaccurate relevant information.

The person or entity submitting such a Reconsideration Request is referred to as the Requestor.

Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please refer to [Article 4, Section 4.2 of the ICANN Bylaws](#) and the Reconsideration Website at <https://www.icann.org/resources/pages/accountability/reconsideration-en>.

This form is provided to assist a Requestor in submitting a Reconsideration Request, and identifies all required information needed for a complete Reconsideration Request. This template includes terms and conditions that shall be signed prior to submission of the Reconsideration Request.

Requestors may submit all facts necessary to demonstrate why the action/inaction should be reconsidered. However, argument shall be limited to 25 pages, double-spaced and in 12-point font. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.

For all fields in this template calling for a narrative discussion, the text field will wrap and will not be limited.

Please submit completed form to reconsideration@icann.org.

1. Requestor Information

Name: Namecheap, Inc. (IANA 1068)

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional):

2. Request for Reconsideration of:

Board action/inaction

Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

On 30 June 2019, ICANN org renewed the registry agreement for the .org and .info TLD without the historic price caps, despite universal widespread public comment supporting maintain the price caps. The decision by ICANN org to unilaterally remove the price caps when renewing legacy TLDs with little (if any) evidence to support the decision goes against ICANN's Commitments and Core Values, and will result in harm to millions of internet users throughout the world. ICANN's announcement about this decision is at <https://www.icann.org/resources/agreement/org-2019-06-30-en> and <https://www.icann.org/resources/agreement/info-2019-06-30-en>.

4. Date of action/inaction:

30 June 2019

5. On what date did you become aware of the action or that action would not be taken?

1 July 2019

6. Describe how you believe you are materially and adversely affected by the action or inaction:

As a domain name registrar, removal of price caps for legacy TLDs will negatively impact Namecheap's domain name registration business.

Uncertainty regarding future price increases (including the possibility of increases that exceed historical norms) may cause Namecheap's customers to not renew domain names or not register new domain names in legacy TLDs. This may additionally impact other legacy TLDs subject to renewal, such as .com. ICANN org ignored the overwhelming number of public comments supporting maintaining historical price caps, essentially making a mockery of the public comment process.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

All domain name registrants, especially those who have domains in legacy TLDs with longstanding price caps, will be adversely affected when legacy TLDs begin to raise prices outside of previously established norms. In addition, web developers and internet hosting companies will see decreased sales and revenue. Unrestricted price increases for legacy TLDs will stifle internet innovation, harm lesser served regions and groups, and significantly disrupt the internet ecosystem. An incredible variety of public comments was submitted to ICANN from all continents (except Antarctica) imploring ICANN to maintain the legacy TLD price caps- which were completely discounted and ignored by ICANN org.

8. Detail of Board or Staff Action/Inaction – Required Information

I. Introduction

Namecheap is submitting this reconsideration request to protect the rights and interests of Namecheap's customers and the entire internet community. Price caps for legacy TLDs have been an integral longstanding foundation for the domain name marketplace, and removing them will result in uncertainty and confusion at a minimum, and in the worst case, increased costs for domain name registrants worldwide. ICANN requested public comment regarding the changes to the .org registry agreement, and the response was overwhelmingly against removing price caps. Comments came from small non-profits, international organizations, government agencies, members of government, individuals, families, businesses, entrepreneurs, and people from lesser developed regions and those underrepresented in the ICANN community. ICANN rejected over 3,500 comments against removing price caps by stating registrants could use other TLDs, renew for 10 years if a price increases were excessive, and claiming (without evidence) that market competition would keep the prices for the third largest TLD from rising compared to other TLDs (ignoring the significant differences between .org and new gTLDs raised by commenters). The decision to ignore public comments to keep price caps in legacy TLDs is contrary to ICANN's Commitments and Core Values, and ICANN should reverse this decision for the public good.

II. Basis for the Reconsideration Request

ICANN's bylaws include Commitment 4(A), which states that ICANN will “seek input from the public, for whose benefit ICANN in all events shall act.” The bylaws also include the following Core Values:

“(ii) Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent

[...]

(vii) Striving to achieve a reasonable balance between the interests of different stakeholders, while also avoiding capture”

In line with the Commitments and Core Values, ICANN's Public Comment Opportunities page prominently states:

“Public Comment is a mechanism that gives the ICANN community and other stakeholders an opportunity to provide input and feedback. Public Comment is a key part of the policy development process (PDP), allowing for refinement of recommendations before further consideration and potential adoption. Public Comment is also used to guide implementation work, reviews, and operational activities of the ICANN organization.”

<https://www.icann.org/public-comments> (accessed 3 July 2019)

Specifically, regarding the public comment period for the Proposed Renewal of .org Registry Agreement, ICANN stated:

“Purpose: The purpose of this public comment proceeding is to obtain community input on the proposed .org renewal agreement (herein referred to as “.org renewal agreement”).

[...]

Following review of the public comments received, ICANN will prepare and publish a summary and analysis of the comments received. The report will be available for the ICANN Board in its consideration of the proposed .org renewal agreement.”

<https://www.icann.org/public-comments/org-renewal-2019-03-18-en> (accessed 3 July 2019)

In addition to the additional information how ICANN accepts and integrates public comments, for the past few years ICANN org has undertaken efforts to conduct

outreach to domain name registrants and encourage their participation in the ICANN community. Although this can be daunting for non-technical individuals, ICANN org provides good introductory information and in part encourages individuals to provide public comments to ICANN.

ICANN's dedicated section for domain name registrants (<https://www.icann.org/registrants>), states:

“Throughout all of ICANN’s work, we endeavor to serve the global public interest, domain name registrants and end-users of the Internet by ensuring a secure and stable domain name system (DNS), all while promoting trust, choice, and competition in the industry. Domain name registrants are an integral component of the DNS; they are the entities or individuals that have acquired the right to use a domain name for a period of time via an agreement with a registrar or reseller.

[...]

Program Goals

Identifying and raising awareness about issues and challenges that registrants are facing.”

- ICANN GDD: Raising Awareness About Registrant Issues and Challenges (presented at ICANN64 <https://64.schedule.icann.org/meetings/962101>) (accessed 3 July 2019)

The domain name registrants page provides links to encourage registrants to participate in ICANN policy, to provide public comments, and to get involved in the ICANN community.

III. Public comments submitted to ICANN

Namecheap reviewed the approximately 3,538 public comments that were submitted in response to the public comment proceedings for the renewal of the .org and .info registry agreements¹. An analysis of the data shows that while a large number of commenters were Namecheap customers, a majority were not and represent a varied cross-section of internet users. Some key takeaways include:

1. 725 comments were submitted by Namecheap customers (20% of all comments)

¹ Comments for the renewal of .biz and .asia registry agreements were reviewed, and were similar in content and support of maintaining price caps as the comments for the .org and .info agreements. They are not included in this analysis because many are duplicates comments submitted by the same commenters.

2. 3,474 comments supported maintaining the price caps (98%)
3. 9 comments supported removing the price caps (0.25%)
4. 450 comments were from nonprofits (13%)
5. 1,197 comments were from domain name registrants with domains in the .org, .info, or .biz TLDs (34%)

Many more comments were submitted by domain name registrants. Although it is not possible to accurately determine how many came from registrants, it appears to have been a large majority of commenters.

A number of commenters raised concerns about including the Uniform Rapid Suspension (URS) in the .org registry agreement. Because the URS is being considered in other ICANN forums, Namecheap is not raising this as an issue during this Request for Reconsideration.

The public comments represent a truly global coalition. Although a majority of comments were from North American and Europe, there were comments from Africa, Asia, Australia, and South America. This represents all continents except Antarctica. The comments from Africa were particularly poignant, pleading with ICANN to help maintain a level playing field for them to be able to grow businesses.

Many nonprofits (which will be directly impacted by the removal of the price caps) submitted comments. They represent an incredible diversity of organizations. Below is a summary of the types of organizations that submitted comments, including multiple organizations of the same type. They include:

Advocacy
Aging
Agriculture
Animal Rescue
Arts
Association
Aviation
Charity (20)
Chess
Civic
Club
Community group
Consumer protection
Education (47)
Emergency response

Environmental protection (16)
Government agency (10)
Health
Historical society
Housing
Human Trafficking
Humanitarian
Industry organization
Job support
Justice
Library (6)
Media (4)
Medical (7)
Meditation
Mentoring
Model train
Motorcycle club
Music (8)
Networking
Open source software
Policy
Poverty
Professional
Publishing
Religious (69)
Research
Sailing
Science
Scouting
Service
Social
Software
Sports
Suicide prevention
Support
Support for the disabled (4)
Surgeons

Technology
Theater
Trade group
Trade organization
Transportation
Veterans support
Voting rights
Wellness
Youth

Contained within the comments are appeals to maintain price caps to ensure the survival of organizations that have extremely limited resources:

"[removing the price cap] will negatively affect nonprofit organizations who struggle to survive as it is"

"A rise in any administrative costs means I give less money to sick and disabled children."

"Every dollar you take from us doesn't get to the people who need it."

"A significant increase in the price of our domain would diminish our ability to offer these benefits and threaten our survival."

"Why, in God's name, would anyone decide that .org domains in particular should be a market free-for-all?"

"Every \$1 in increased prices on the 10+ million .org domain users would generate more revenue each year than is utilized by all but the top one-percent of charitable nonprofits. Each one-dollar hike in costs per domain would divert more than \$10 million from nonprofit missions for the enrichment of the monopoly. By anyone's estimate, this money would be better spent delivering an additional 1,600,000 meals by Meals on Wheels to seniors to help maintain their health, independence and quality of life. Or \$10 million could enable nonprofits to provide vision screenings for every two- and three-year-olds in California. Or pay for one million middle school students to attend performances of "Hamilton" or "To Kill a Mockingbird". Nonprofits should not need to choose between paying for a domain name and helping people."

Some of the nonprofits that submitted comments provide truly vital services, helping the most disadvantaged people in the world. This includes organizations that:

- combat human trafficking

- work with indigenous and aboriginal communities in lesser developed regions,
- help prevent suicide
- provide resources for sick and disabled children
- provide support for people with life-threatening medical conditions
- provide food, shelter, and education to orphan children in Africa
- provide free VPN service for areas that struggle with government censorship of the internet
- help farmers in South America expand their businesses

When reviewing all of the comments, some common themes were provided by a number of commenters:

- using a .org domain name is critical to their nonprofit: it is well-known, safe, and trusted.
- many have been using their .org domain for many years, and the cost and risk of moving to another TLD (e.g. losing search engine rankings, notifying the public of the new TLD, etc) causes great concern.
- they do not want to use another TLD, because .org is known to be for nonprofits. There are no equivalent TLDs that have the established reputation of .org.
- if prices increase too much, they might abandon using a domain name in order to migrate to another platform that is outside of ICANN's remit (and would include price certainty). This includes relying solely upon social media or mobile apps.
- there was concern that ICANN was captured by Public Interest Registry (PIR), in that the removal of the price cap only benefits PIR and not registrants in .org or the internet in general.²

² Namecheap notes that under the base registry agreement that now covers .org, .info, and other legacy TLDs, registry operators may actually pay **more** fees to ICANN than under the previous agreements. The base agreement includes quarterly fees due to ICANN of US\$6,250 (plus US\$0.25 per domain transaction fee). See Section 6.1 of the registry agreement. The quarterly fee was not present in the prior registry agreements. It is telling that while under the current budget pressure, ICANN did not highlight the additional US\$25,000 that each registry operator would have to pay to ICANN annually under the new agreements (and did not consider

- questions why unrestricted price increases should be considered because at this point PIR is maintaining the .org registry and not undertaking development initiatives that would require additional resources.

- concern that removing the price cap for .org would also lead to removing the price cap for the .com registry agreement (which is subject to renewal in 2024, is the largest TLD by far, and because it is commercial in nature, is more likely to lead to price increases).

IV. ICANN org's response to public comments

In ICANN org's analysis of the public comments, ICANN rejects all of the comments against removing the price cap with a conclusory statement that is devoid of any supporting evidence:

"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 .org Registry Agreement 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."

<https://www.icann.org/en/system/files/files/report-comments-org-renewal-03jun19-en.pdf> (accessed 3 July 2019)

ICANN then goes on to state that any price increases would require 6 months advance notice and that registrants could renew domains for 10 years at that point.

The generalizations in ICANN org's analysis ignores significant information that is contrary to its sweeping conclusions:

1. The TLD .org is the 3rd largest, with over 10 million domains. This is the equivalent number as the top 10 new gTLDs by volume. The TLD .org thus commands a large share of the TLD space, and as suggested by the Registrar Stakeholder Group (RrSG) comment, additional analysis is needed to determine whether this market share can result in uncompetitive practices.

2. The TLD .org was established in 1985. It is universally known, associated with nonprofit use, and has an excellent reputation.

3. Changing domains for an established entity can be a cumbersome and costly

how registry operators would either absorb this cost or pass this cost to registrars or domain name registrants).

process, often with negative results (inability to connect with users, loss of search engine positions, confusion over validity of new domain, etc). Many would rather stay with an established domain (and the associated goodwill).

4. TLDs are not interchangeable as ICANN states. While there may be 1,200 other gTLDs to choose from, many of the new gTLDs are closed and not usable by nonprofits (e.g. trademarks, geographic, restricted for certain uses). Additionally, a number of TLDs are whimsical (e.g. .rocks or .ooo) or targeted to certain uses (e.g. .horse or .motorcycles) and cannot be used by nonprofits or businesses. It would be desirable for ICANN to identify which new gTLDs might be acceptable replacements to .org.

5. While there are additional TLDs for nonprofits (launched beginning in 2015 by PIR), there are few registrations in those TLDs (perhaps demonstrating that nonprofits do not want an alternative to .org). According to ICANN's monthly reports for March 2019 (at <https://www.icann.org/resources/pages/registry-reports>), the TLDs have the following domain totals:

.ngo³: 3,812

.ong⁴: 3,812

.संगठन (.xn--i1b6b1a6a2e)⁵: 1,323

.机构 (.xn--nqv7f)⁶: 1,291

.opr (.xn--c1avg)⁷: 2,317

6. There are some concerns higher levels of abuse exists in new gTLD domains (which decreases the value of new gTLDs in general). This includes (but is not limited to) higher levels of spam (<https://www.techrepublic.com/article/rampant-spam-falling-registrations-show-new-gtlds-have-limited-business-value/>). Additionally, ICANN's own analysis shows greater levels of abuse in new gTLDs compared to legacy TLDs: while new gTLDs represent 12% of total domains, they comprise 52% of domains identified with security threats (see ICANN DAAR report from January 2019 at <https://www.icann.org/en/system/files/files/daar-monthly-report-31jan19-en.pdf>).

7. Universal acceptance (UA)- including for new gTLDs- continues to be a high

³ NGO stands for "non-governmental organization"

⁴ ONG is the equivalent of NGO in some languages including French, Spanish, and Portuguese (<https://pir.org/pir-files-applications-to-create-and-manage-ngo-and-ong-domains/>)

⁵ the equivalent of .org in Devanagari

⁶ the equivalent of .org in Chinese

⁷ the equivalent of .org in Russian

priority for ICANN org. ICANN's Board has made improving and promoting UA and Internationalized Domain Name (IDN) implementation one of five strategic priorities for FY21-FY25. (<https://uasg.tech/2018/12/icann-further-commits-to-universal-acceptance-of-domain-names-and-email-addresses/>). Due to issues with universal acceptance, it is possible that new gTLDs will not be usable in internet browsers, mobile devices, or email systems- all which greatly diminish the ability for nonprofits to switch to a new gTLD for their main domain name.

V. Conclusion

ICANN's Commitment claims that it will seek input from the public, and always act in the benefit of the public. ICANN's Core Values allege that ICANN will seek to determine the global public interest to strike a balance and avoid capture. Additionally, ICANN appears to use the public comment process to obtain community feedback for items such as the renewal of legacy TLD registry agreements, and states that such comments will be considered and incorporated into ICANN actions. Furthermore, ICANN org actively encourages regular internet users to be involved in such processes.

Based upon ICANN org's action in the renewal of the .org and other legacy TLD registry agreements, it is clear that ICANN has failed to abide by its Commitment, Core Values, and public statements. The ICANN org will decide whether to accept or reject public comment, and will unilaterally make its own decisions- even if that ignores the public benefit or almost unanimous feedback to the contrary, and is based upon conclusory statements not supported by evidence. This shows that the public comment process is basically a sham, and that ICANN org will do as it pleases in this and other matters. It is a concern not only for the renewal of the .org and other legacy TLD registry agreements being renewed in 2019, but an even greater concern for the upcoming renewal of the .com registry agreement- as well as other vital policy issues under consideration by ICANN now and in the future.

It is disappointing that when internet users got involved on a massive scale in ICANN processes, ICANN failed its Commitments and Core Values by completely rejecting their feedback. ICANN org should revise all legacy TLD registry agreements to include the now missing price caps, otherwise it is clear that ICANN does not follow its Commitments, Core Values, nor does it serve the greater public good.

9. What are you asking ICANN to do now?

Namecheap requests that ICANN org and the ICANN Board reverse its decision and include (or maintain) price caps in all legacy TLDs.

10. Please state specifically the grounds under which you have the standing and the right to assert this Reconsideration Request, and the grounds or justifications that support your request.

Namecheap is an ICANN-accredited domain name registrar, and as indicated above, unrestricted price increases will have a direct impact on Namecheap's domain registration business as well as additional services (e.g. domain hosting). Namecheap is additionally filing this Reconsideration Request on behalf of the 725 Namecheap customers and internet users that submitted public comments stating how they will be harmed by removing the price cap, and who all likely lack the knowledge about ICANN processes to submit their own Reconsideration Requests. All of Namecheap's customers, as well as the internet community as a whole, will be harmed by uncertainty of price increases, or will be further harmed when prices increase for .org or other legacy TLDs after price caps are removed.

Maintaining the historical price caps will ensure that prices for .org and other legacy TLDs will be predictable and not harm the greater internet population.

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

Yes

No

11a. If yes, is the causal connection between the circumstances of the Reconsideration Request and the harm substantially the same for all of the Requestors? Explain.

Although the resulting impact will be different for Namecheap and domain name registrants, all of them will be negatively impacted by the uncertain threat of price increases without price caps, or will be actually harmed when prices increase in .org and other legacy TLD once price caps are removed.

12. Are you bringing this Reconsideration Request on an urgent basis pursuant to Article 4, Section 4.2(s) of the Bylaws?

Yes

No

12a. If yes, please explain why the matter is urgent for reconsideration.

13. Do you have any documents you want to provide to ICANN?

No.

Terms and Conditions for Submission of Reconsideration Requests

Reconsideration Requests from different Requestors may be considered in the

same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is substantially the same for all of the Requestors. Every Requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.

The BAMC shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The BAMC may summarily dismiss a Reconsideration Request if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous. The BAMC's summary dismissal of a Reconsideration Request shall be documented and promptly posted on the Reconsideration Website at <https://www.icann.org/resources/pages/accountability/reconsideration-en>.

Hearings are not required in the Reconsideration Process; however, Requestors may ask for the opportunity to be heard. The BAMC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing. The BAMC's decision on any such request is final.

For all Reconsideration Requests that are not summarily dismissed, except where the Ombudsman is required to recuse himself or herself and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request. The BAMC shall make a final recommendation to the Board with respect to a Reconsideration Request following its receipt of the Ombudsman's evaluation (or following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable).

The final recommendation of the BAMC shall be documented and promptly (i.e., as soon as practicable) posted on the Reconsideration Website at <https://www.icann.org/resources/pages/accountability/reconsideration-en> and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the BAMC's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the ICANN Reconsideration Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the BAMC's final recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.

The ICANN Board shall not be bound to follow the recommendations of the BAMC. The ICANN Board's decision on the BAMC's recommendation is final

and not subject to a Reconsideration Request.

By submitting my personal data, I agree that my personal data will be processed in accordance with the ICANN [Privacy Policy](#), and agree to abide by the website [Terms of Service](#).


Signature

07/12/2019
Date

Richard Kirkendall
Print Name