



VERISIGN™

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Messrs. Szóka, Schaefer and Rosenzweig:

I am writing to you to address certain false statements contained in TechFreedom's recently released white paper entitled *ICANN Transition is Premature – Unanswered Questions Require an Extension*. These falsehoods are presented in support of your otherwise baseless statement that ICANN was involved in a conspiracy with my company, VeriSign, Inc., to violate the antitrust laws in connection with the auction of the .web gTLD. This assertion is demonstrably false and raises serious questions with respect to the motives for, as well as the sources and credibility of, your paper.

In the section of your paper entitled "Antitrust Litigation Will Be Used to Undermine ICANN" (pages 18-21), you assert, without any supporting evidence or cited sources, that ICANN improperly entered into an agreement or series of agreements pursuant to which the winning bidder of the .web auction would pay to ICANN \$135 million to secure the .web gTLD through a public auction and, thereafter, Verisign would acquire the bidder and thereby assume control of the .web gTLD. You assert that "ICANN gladly agreed to this windfall" and "was all too willing to play ball" with the winning bidder and Verisign. You conclude that parties wishing to bring lawsuits could assert that "ICANN was involved in a conspiracy to fix prices and perpetuate a Verisign monopoly over premium web properties." (*Id.* at 18.) All of these statements are complete fabrications.

Your assertions that there were agreements between ICANN and the winning bidder and/or Verisign are false. ICANN did not enter into an agreement with the winning bidder or Verisign at any time. Indeed, ICANN did not know that Verisign had any relationship of any kind with respect to the winning bidder or the .web auction until *after* the auction. Further, contrary to your misrepresentations, Verisign did not acquire the winning bidder before or after

the auction, nor does it have any agreement that would allow it to do so. Simply put, there were no agreements of any kind between ICANN and Verisign or ICANN and the winning bidder regarding the auction of the .web gTLD, the payment of auction proceeds to ICANN, or Verisign assuming control or ownership of the winning bidder.

In truth, a public auction was mandated by ICANN's New gTLD Applicant Guidebook governing the delegation of new gTLDs. ICANN had no choice in the matter – it did not “gladly agree[] to” the public auction nor “play ball” with the winning bidder or Verisign. The current version of the Guidebook was adopted in 2012, four years prior to the auction, as a result of years of discussions and agreements within the Internet community. Under the Guidebook, a public auction is mandated if applicants seeking the same gTLD do not resolve the contention among the competing applications. Thus, ICANN does not decide that there will be a public auction; the competing applicants, consistent with the terms of the Guidebook, determine that there will be a public auction. ICANN is not involved.

Further, you misrepresent that “ICANN gladly agreed to” a huge “windfall.” In fact, the proceeds of a public auction are set aside by ICANN for investment for the benefit of the entire Internet community. By contrast, the private auction that was proposed by some other applicants for the .web gTLD provided that the funds from the auction be divided among competitors seeking the gTLD, for their own private benefit, including payments to those competitors losing the auction.

Among the reasons why applicants for the .web gTLD might have failed to agree to a private auction is because such auctions permit the losing competitors to split up the proceeds of the auction (and thus have every motivation to game the system for their private benefit). Similar auctions have come under close antitrust scrutiny as potential illegal bid rigging schemes. In contrast to such a private auction, public auctions, such as that held for the .web TLD, are *open, transparent and truly competitive*. Indeed, your readers should have been told that ICANN has conducted at least seventeen other public auctions of new gTLDs. In other words, there is nothing unique or suspicious regarding a transparent, open, competitive public ICANN auction.

Moreover, having raised the issue of private auctions, you had a responsibility to acknowledge that the U.S. Department of Justice *refused* to conduct a business review of such private auctions,¹ reportedly because the Department determined that “[a]rrangements by which private parties agree to resolve gTLD string contentions solely to avoid a public auction present antitrust issues.”

Thus, contrary to the white paper, there is no “normal” private auction in connection with the delegation of gTLDs because private auctions themselves² implicate the antitrust laws in ways that open and competitive auctions such as the ICANN auction do not, as noted by the Department of Justice.

¹ <http://domainincite.com/12308-breaking-doj-says-new-gtld-private-auctions-might-be-illegal>

² Where an applicant or group of applicants seek to establish winners and losers in advance of the actual bidding, such conduct is *per se* illegal under antitrust rules.

I have confined my comments to the section of the white paper addressing the allegations of improprieties in connection with the .web auction. However, the statements in this section of the paper alone are so baseless and misleading that, if they are not retracted by the issuance by you of a corrective notice, they justifiably will raise more far-reaching questions about your paper, sources of information and, indeed, motives. I strongly urge you to remove these misrepresentations from your white paper.

Very truly yours,



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