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ICANN'S TOP-LEVEL DOMAIN NAME PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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ICANN'S TOP–LEVEL DOMAIN NAME PROGRAM

WEDNESDAY, DECEMBER 14, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:04 a.m., in room 2123, Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Members present: Representatives Walden, Terry, Stearns, Shimkus, Bono Mack, Blackburn, Bilbray, Bass, Gingrey, Scalise, Latta, Guthrie, Kinzinger, Barton, Upton (ex officio), Eshoo, Markey, Matsui, Barrow, Christensen, and Waxman (ex officio).

Staff present: Ray Baum, Senior Policy Advisor/Director of Coalitions; Allison Busbee, Legislative Clerk; Neil Fried, Chief Counsel, C&T; Debbee Keller, Press Secretary; Gib Mullan, Chief Counsel, CMT; David Redl, Counsel, C&T; Roger Sherman, Democratic Chief Counsel, Communications and Technology; Shawn Chang, Democratic Counsel; Kara Van Stralen, Democratic Special Assistant; Jeff Cohen, Democratic Counsel, FCC Detailee; and Phil Barnett, Democratic Staff Director.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. Call to order the Subcommittee on Communications and Technology for the purpose of a hearing on ICANN's top-level domain name program. I welcome our witnesses here today, and we look forward to your testimony.

Although most Americans probably have never heard of the Internet Corporation for Assigned Names and Numbers, sorry, ICANN, the California not-for-profit manages the top-level domains, that part that comes after the dot in, for example, a .com, .net and .gov. Today's hearing focuses on how to balance ICANN's plans to expand the level of top-level domains with safeguards to ensure businesses are not forced to expend extraordinary sums to guard against fraud, trademark abuse, or dilution of their brands.

For several years ICANN has considered the expansion of top-level domains. Reasonable people can differ on the process that ICANN has followed leading to this point, but we now stand at the threshold of implementation, and the question before us today is what is the best path forward?

To illustrate concerns of critics, consider the number of domains a company may be faced with registering. Apple, for example, has

Apple.com, iPhone.com, iCloud.com, and iChat.com. iPad.com, however, displays nothing more than a splash page that says it is a site that is soon coming, likely meaning someone bought the domain name in anticipation of selling it to Apple. The House of Representatives Information Security Group has flagged Facetime.com as a malicious site that may attempt to install rogue scripts on your computer if you visit it. These are just a few examples of the issues that arise every day on the Internet between cybersquatters, criminals, and legitimate businesses.

Now, bear in mind that all these examples are in the .com top-level domain. To protect against mischief, Apple also owns domain names in other top-level domains like Apple.info, to say nothing of the more than 200 country code top-level domains and the international domain names that use non-Latin alphabets. Under the expansion that ICANN will begin this January, trademark holders are concerned that not only will each new top-level domain present a new chance for bad actors to purchase second-level domains for nefarious or illegitimate purposes, but that the top-level domains themselves could become fertile ground for cybersquatters. This is particularly concerning to trademark holders because each application for a top-level domain carries a $185,000 price tag.

To try to protect business interests in this new world of nearly unlimited top-level domains, ICANN has instituted a 7-month objection period for each new top-level domain application. One of the objections available to companies is that a new top-level domain infringes on another's legal rights. To address second-level domain issues, ICANN has required a trademark clearinghouse and sunrise periods during which trademark holders can preregister for domain names.

Nonetheless, the success or failure of even the best planned processes comes down to execution. How can ICANN implement these processes? What lessons can be learned early in the process to prevent failure? Are there additional safeguards in the event this process doesn't work as advertised?

These and other questions are the reason for today's hearing, and I look forward to the testimony of ICANN, the NTIA, and those who have had good experiences with the limited expansion of top-level domain names to date, and those who are still concerned that their valuable brands stand to be tarnished by this process. So I thank the witnesses for being here today to share their insight.

[The prepared statement of Mr. Walden follows:]

Statement of the Honorable Greg Walden
Chairman, Subcommittee on Communications and Technology
Hearing on "ICANN's Top-Level Domain Name Program"
December 14, 2011

Although most Americans have probably never heard of the Internet Corporation for Assigned Names and Numbers, the California not-for-profit manages top-level domains: that part that comes after the "dot" in, for example, dot-com, dot-net, and dot-gov. Today's hearing focuses on how to balance ICANN's plans to expand the availability of top-level domains with safeguards to ensure businesses are not forced to spend extraordinary sums to guard against fraud, trademark abuse, or dilution of their brands.

For several years, ICANN has considered the expansion of top-level domains. Reasonable people can differ on the process that ICANN has followed leading to this point. But we now stand at the threshold of implementation and the question before us is what's the best path forward?

To illustrate concerns of critics, consider the number of domains a company may be faced with registering. Apple, for example, has apple.com, iphone.com, icloud.com, and ichat.com. Ipad.com, however, displays nothing more than a splash page that says a site is coming soon – likely meaning someone bought the domain name in anticipation of selling it to Apple. The House of Representatives information security group has flagged Facetime.com as a malicious site that may attempt to install rogue scripts on your computer if you visit it. These are just a few examples of the issues that arise every day on the Internet between cybersquatters, criminals, and legitimate businesses.

Now, bear in mind that all of these examples are in the dot-com top-level domain. To protect against mischief, Apple also owns domain names in other top-level domains, like apple.info, to say nothing of the more than 200 "country code" top-level domains and the international domain names that use non-latin alphabets.

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To try to protect business interests in this new world of nearly unlimited top-level domains, ICANN has instituted a seven month objection period for each new top-level domain application. One of the objections available to companies is that a new top-level domain infringes on another's legal rights. To address second-level domain issues ICANN has required a trademark clearinghouse and "sunrise periods" during which trademark holders can pre-register for domain names.

None-the-less, the success or failure of even the best planned processes comes down to execution. How will ICANN implement these processes? What lessons can be learned early in the process to prevent failure? Are there additional safeguards in the event that this process doesn't work as advertised? These and other questions are the reason for today's hearing and I look forward to the testimony of ICANN, the NTIA, those who have had good experiences with the limited expansion of top-level domains to date, and those who are still concerned that their valuable brands stand to be tarnished by this process.

Mr. WALDEN. At this point I have 1 ½ minutes left, and I would yield to the chairman of the full committee, who has a statement he wants to put in the record.

Mr. UPTON. I am just going to insert it in the record.

[The prepared statement of Mr. Upton follows:]

Statement of the Honorable Fred Upton

Chairman, Committee on Energy and Commerce

Hearing on "ICANN's Top-Level Domain Name Program"

December 14, 2011

The Internet is one of the greatest inventions of the 20th century. It is also responsible for spurring incredible innovation and job growth. Given its importance to both the United States and the world, we all want to see it expand and thrive. ICANN clearly believes that increasing the number of top level domains will help foster that expansion, providing increased opportunities on the Internet for entrepreneurs and businesses of all types.

However, many businesses and members of the Internet community fear that expanding the number of top level domains without greater care will impose unnecessary costs on businesses and increase the risks of fraud and trademark dilution. Today's hearing will give both ICANN and those who may be impacted by ICANN's decision a chance

to address these concerns and work together to ensure a positive outcome.

As ICANN moves forward to increase opportunity on the Internet, it must do so with an eye toward protecting legitimate business interests and without hurting American jobs and economic interests. I thank the witnesses for being here and look forward to their testimony.

Mr. WALDEN. And then I would yield to Mr. Terry for the remainder of my time.

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. TERRY. Thank you, Mr. Chairman, for holding today's hearing to discuss this very important topic. I appreciate our witnesses joining us here today and look forward to listening to all of your testimony.

I am primarily interested in hearing Mr. Pritz explain the benefits of expanding the number of top-level domain names. I am told that this expansion could promote competition and choice in domain address and market, while providing new opportunities for organizing information on the Internet or for marketing and services. But how will the Internet users ultimately be affected is the ultimate question.

The Justice Department's Antitrust Division has raised concerns that new top-level domains could, quote, "impose substantial additional domain registration costs on many consumers." Others are concerned that an increase in the number of top-level domains will exacerbate the potential for abuse of the domain name system. In my opinion, these concerns should not be taken lightly. The consumer benefits of this proposed expansion should far outweigh any potential harms it may cause.

Mr. Chairman, I again thank you and our expert witnesses here today for joining us, and I yield back.

Mr. WALDEN. The gentleman yields back the balance of his time.

The chair now recognizes the ranking member of the subcommittee, Ms. Eshoo from California, for 5 minutes.

OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. ESHOO. Thank you, Mr. Chairman. And good morning to all Members and the witnesses.

I welcome today's hearing to examine ICANN's proposed rollout of new generic top-level domains. This is an exciting time in the evolution of the Internet. Domain name registrations across all TLDs increased by 2.5 percent between the first and the second quarters of this year. And all signs point to continued growth, as over 40 percent of the world's population is expected to come online by 2015. That is quite extraordinary, that figure, just in and of itself.

When this subcommittee last examined the issue in June of 2009, ICANN's CEO acknowledged the concerns about trademark and intellectual property protections, and promised that the new rollout of new TLDs would not move forward until these concerns had been addressed.

I am not opposed to the expansion of new gTLDs. I believe, in fact, with the right process in place, this program could enable new, innovative business models that expand user choice and make it easier to find Web sites within a particular category such as hotels, restaurants, drug stores, and other sites. But the written testimony before us suggests that many businesses continue to have

significant concerns regarding the economic impact, the potential for consumer confusion, and increased cybersquatting that could occur without proper checks and balances. Our hearing today will enable us to explore these issues and determine what steps ICANN has taken since our hearing more than 2 years ago.

The potential rollout of thousands of new gTLDs requires a clear understanding of the safeguards being put in place to protect trademarks and copyrights, how disputes between common brand names will be addressed, and what costs businesses will incur in defending their brand. Forcing small businesses, nonprofits, and other organizations with limited resources to spend $185,000 per domain name just to protect their brands I don't think is sustainable.

And despite the enactment of the Anticybersquatting Consumer Protection Act in 1999, cybersquatting remains a serious problem. In fact, one form of cybersquatting, in which malicious actors register domain names with common misspellings of popular Web sites, is particularly pervasive. Collectively, these domain name typos receive at least 68.2 million daily visitors, leading to consumer confusion and even fraudulent activity.

I hope today's hearing will enable ICANN to find solutions that strengthen the gTLD program and address many of the legitimate concerns raised by the business community. These include the problem of cybersquatting, the potential for consumer confusion, and addressing the costs associated with the program.

So I would like to thank all the witnesses for being here today, and I will yield the balance of my time to Ms. Matsui for her opening statement.

OPENING STATEMENT OF HON. DORIS O. MATSUI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. MATSUI. Thank you, Ranking Member Eshoo, for yielding me time. I am pleased that we are here today, and I would like to thank the witnesses for joining us.

As we all know, next month ICANN plans to begin the process of applying for and introducing new gTLDs. I am concerned about the impact and potential unintended consequences that this proposal might pose on nonprofits, small businesses, American innovators, and consumers. There may also be practical impacts such as privacy and cybersecurity that will need consideration.

Right now there are a number of unanswered questions that remain. We need answers to fundamental questions like will this policy create additional financial burden on brand owners? I am mostly concerned about expansion of second-level domain names, which has the potential to dramatically increases costs for rights holders for the rising costs associated with defensive registrations and guarding against cybersquatting.

Mr. Chairman, I believe ICANN needs to take a step back, slow down, and reexamine this proposal. The Internet is just too valuable an asset for consumers, for businesses, and for the economy as a whole. I believe there is a way to get this right, and I encourage all stakeholders to work together to properly address the outstanding concerns.

I thank you, Mr. Chairman, for holding this important hearing today, and I yield back the balance of my time.

Mr. WALDEN. The gentlelady yields back the balance of her time. The gentlelady's time has expired.

Are there any members on the Republican side seeking recognition for opening comments? If not, I would turn then to the gentleman from California, Mr. Waxman, for 5 minutes.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you, Mr. Chairman. I am pleased that the subcommittee is holding this timely hearing on the Internet Corporation for Assigned Names and Numbers, or ICANN.

Two years ago, the Democratic members of this subcommittee sent a letter to then-Commerce Secretary Locke supporting the creation of a permanent instrument to replace the Joint Project Agreement between ICANN and the Department of Commerce. At the time, we stated that any such instrument must include a mechanism for the implementation of new generic top-level domains to ensure, quote, "an appropriate consultation with stakeholders," as well as periodic reviews. Today we face the first real test of the new instrument known as, quote, "Affirmation of Commitments," which was signed by ICANN and the Department of Commerce in September 2009. And I want to make sure that the process for the upcoming expansion of new gTLDs fully reflects the goals of transparency and accountability called for in the Affirmation of Commitments.

I have three concerns that I hope today's panel will address. First, cost. It has been estimated that the new gTLD application program will bring in $92.5 million in revenue for ICANN, but only $36 million of that will be spent on the launch of the program. An additional $31 million will be set aside for a contingency reserve for litigation and other potential costs. I would like to hear more about how ICANN plans to utilize the substantial revenues coming in from this program.

Second, accountability. ICANN has created several new processes to address trademark protection concerns with the new gTLDs, such as a rapid system to take down infringing domain names and a one-stop clearinghouse to allow trademark holders to register and protect their marks. Nevertheless, ICANN has not yet selected the entities that will run these crucial new programs. With the new gTLD program scheduled to launch next month, I am interested to learn what ICANN plans to do about this critical challenge.

And finally, timing. I understand that the development of the new gTLD program has gone through a 7-year process involving thousands of stakeholders. It is not clear to me, however, why there is the urgency to launch up to 500 new gTLDs during the first round. I would like to hear today's witnesses discuss whether it makes more sense to consider a phased launch to ensure that ICANN has the appropriate resources and procedures in place to react to actual demand. A phase-in might also give the global community more time to understand and absorb the impact of the program.

I am not opposed to the creation of new gTLDs. Expanding the number of gTLDs is consistent with ICANN's mission to promote competition and consumer choice. NTIA deserves credit for its diligent work with ICANN through the Government Advisory Committee, and I know the agency will continue to monitor this issue closely.

Thank you again, Mr. Chairman, for holding today's hearing. I look forward to the testimony of our expert panel. Yield back the balance of my time.

Mr. WALDEN. The gentleman yields back the balance of his time. No other Members seeking recognition, we will move on to the panel.

We appreciate all of you being here today, and your testimony, which I have read, it is very informative and helpful.

We will lead off with Ms. Fiona Alexander, Associate Administrator, Office of International Affairs, National Telecommunications and Information Administration. I am delighted to have you here this morning.

One thing just for all the witnesses, you have to push the little button to turn the microphone on when it comes your time. And you also want to get pretty close to these microphones, or we can't hear you as well.

So, Ms. Alexander, please go ahead.

STATEMENTS OF FIONA M. ALEXANDER, ASSOCIATE ADMINISTRATOR, OFFICE OF INTERNATIONAL AFFAIRS, NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, DEPARTMENT OF COMMERCE; KURT PRITZ, SENIOR VICE PRESIDENT, STAKEHOLDER RELATIONS, INTERNATIONAL CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN); DANIEL L. JAFFE, EXECUTIVE VICE PRESIDENT, GOVERNMENT RELATIONS, ASSOCIATION OF NATIONAL ADVERTISERS, ON BEHALF OF COALITION FOR RESPONSIBLE INTERNET DOMAIN OVERSIGHT; THOMAS EMBRESCIA, CHIEF EXECUTIVE OFFICER, EMPLOY MEDIA; ANJALI K. HANSEN, INTELLECTUAL PROPERTY ATTORNEY, COUNCIL OF BETTER BUSINESS BUREAUS; AND JOSHUA S. BOURNE, PRESIDENT, THE COALITION AGAINST DOMAIN NAME ABUSE

STATEMENT OF FIONA M. ALEXANDER

Ms. ALEXANDER. Thank you very much.

Good morning, Chairman Walden, Ranking Member Eshoo, and members of the committee. I appreciate the opportunity to talk to you today on behalf of NTIA regarding ICANN's planned expansion of the Internet domain name system through the introduction of new generic top-level domain names, or new gTLDs.

Since its inception in 1998, ICANN has been charged with promoting competition in the registration of domain names, while ensuring the security and stability of the DNS. In 2000 and 2003, ICANN conducted a limited expansion of gTLDs. In 2005, it initiated the process we are discussing today. After 6 years of multistakeholder discussion, including input from governments through the GAC, ICANN approved the rules for the new gTLD program in the form of an applicant guidebook.

Expansion of the gTLD space is expected to provide a platform for city, geographic, and internationalized domain names, among other things. This type of change to the DNS is expected to enhance consumer trust and choice, and reinforce the global nature of the Internet. It is also expected that a portion of applications will be either generic words or brand-focused as part of business development, investment, and start-up plans.

Within ICANN, the GAC provides governments a meaningful opportunity to participate in the development of policies related to DNS issues. Over the last 6 years, NTIA has actively engaged with its counterparts in the GAC in developing advice to inform this program. In December 2010, the GAC developed a scorecard of the outstanding issues governments had with the program. Between February and June of this year, GAC representatives from around the world met with the ICANN board and extended face-to-face discussions to review the GAC scorecard and to identify specific differences between GAC advice and the existing version of the applicant guidebook. These unprecedented exchanges resulted in the adoption of a number of changes to the program.

NTIA believes that ICANN improved the new gTLD program by incorporating a significant number of proposals from the GAC, including providing law enforcement and consumer protection authorities with more tools than those available in existing gTLDs. The fact that not all of the GAC's proposals were adopted as originally offered does not represent a failure of the process or a setback to governments. Rather, it reflects the reality of a multistakeholder model.

As a member of the GAC, NTIA will continue to actively monitor and participate in discussions relating to the expansion of new gTLDs. NTIA appreciates that certain trademark owners and other stakeholders have expressed concerns regarding this program. Safeguarding the rights of trademark owners and ensuring appropriate consumer protections as this process moves forward remains a priority. As such, NTIA is committed to working with U.S. industry and other stakeholders as the new gTLD program unfolds to mitigate any unintended consequences.

In addition, NTIA intends to continue to collaborate with U.S. Government agencies to track their experiences and to coordinate the collection of data regarding the effect on consumers and business users. In particular, NTIA, working with other agencies, will focus on ensuring that law enforcement concerns are addressed through strength in registry and registrar accreditation agreements and enhanced contract compliance.

NTIA will also be encouraging all interested parties to collaborate in the development of metrics to facilitate the review of the new gTLD program. We feel strongly that the review must be informed by fact-based, real-time experiences that can be captured by data from a variety of sources.

NTIA is dedicated to maintaining an open, global Internet that remains a valuable tool for economic growth, innovation, and the free flow of information, goods, and services online. We believe the best way to achieve this goal is to continue to actively support and participate in multistakeholder Internet governance processes such as ICANN.

Thank you again, Mr. Chairman, for the opportunity to testify this morning. NTIA looks forward to working with Congress, U.S. businesses, individuals, and other stakeholders to preserve and enhance the multistakeholder model. It has been a hallmark feature of the global Internet institutions that have been responsible for the success of the Internet.

I will be happy to answer any questions. Thank you.

[The prepared statement of Ms. Alexander follows:]

Testimony of Fiona M. Alexander
Associate Administrator, Office of International Affairs
National Telecommunications and Information Administration
United States Department of Commerce

Before the

Committee on Energy and Commerce
Subcommittee on Communications and Technology
United States House of Representatives

Hearing on
ICANN's Top Level Domain Name Program
December 14, 2011

Introduction

Good morning Chairman Walden, Ranking Member Eshoo, and Members of the Committee. I appreciate the opportunity to talk to you today on behalf of the National Telecommunications and Information Administration (NTIA) regarding the planned expansion of the Internet's domain name system (DNS) by the Internet Corporation for Assigned Names and Numbers (ICANN). NTIA is the Executive Branch expert on issues relating to the DNS and supports a multi-stakeholder approach to the coordination of the DNS to ensure the long-term viability of the Internet as a force for innovation and economic growth. Working with other stakeholders, NTIA is developing policies to preserve an open, interconnected global Internet that supports continued innovation and economic growth, investment, and the trust of its users. This multi-stakeholder model of Internet policymaking – convening the private sector, civil society as well as governments to address issues in a timely and flexible manner – has been responsible for the past success of the Internet and is critical to its future.

I will begin today by providing context for the announced expansion of generic top level domains (gTLDs) used on the Internet, detail the specific efforts of NTIA as the U.S. Government representative to the Governmental Advisory Committee (GAC) to improve the

ICANN program, and then describe the tools available to NTIA and the global community to manage any challenges that may arise.

Context for Planned Expansion of the Domain Name System

ICANN is a not-for-profit corporation based in California that is responsible for coordinating the Internet's DNS. The DNS is a critical component of the Internet infrastructure. It works like a telephone directory, allowing users to reach websites using easy-to-understand domain names (e.g., http://www.commerce.gov) rather than the numeric network server addresses (e.g., http://170.110.225.163) necessary to retrieve information on the Internet. ICANN develops policies through a bottom-up, multi-stakeholder led process with an international community of stakeholders that mirrors the global nature of the Internet. On September 30, 2009, NTIA, on behalf of the Department of Commerce, entered into an *Affirmation of Commitments* (Affirmation) with ICANN that established ICANN's multi-stakeholder, private-sector led model as the long-lasting framework for the technical coordination of the Internet DNS.[1] The Affirmation completed the transition begun in 1998 by a Memorandum of Understanding (MOU) between the Department and ICANN that was amended several times.

Since its inception in 1998, ICANN has been charged with promoting competition in the registration of domain names, while ensuring the security and stability of the DNS. The goal to establish new gTLDs beyond .com, .edu, .gov, .int, .mil, .net, and .org began over a decade ago. In 2000 and 2003, ICANN conducted a limited expansion of generic top level domain names.

[1] *See* http://www.ntia.doc.gov/files/ntia/publications/affirmation_of_commitments_2009.pdf.

These limited expansions resulted in the addition of .biz, .info, .name, .pro, .aero, .coop, .museum, .asia, .cat, .jobs, .mobi, .tel, and .travel gTLDs to the DNS. In 2005, it initiated a process to develop the policies and procedures necessary to introduce an unlimited number of new gTLDs. After six years of multi-stakeholder policy development and implementation planning, including input from governments through the GAC, the ICANN Board of Directors (Board) approved the rules for the new gTLD program in June 2011, publishing the rules in the form of an Applicant Guidebook.[2]

Expansion of the gTLD space is expected to provide a platform for city, geographic, and internationalized domain names. The latter will allow new TLD operators to create and provide content in native languages and scripts beyond the existing ASCII or Latin scripts. This type of change to the DNS is expected to enhance consumer trust and choice, and reinforce the global nature of the Internet. It is also expected that a portion of applications will be either generic words or brand-focused as part of business development, investment, and startup plans.

NTIA as a Member of the Governmental Advisory Committee (GAC)

The multi-stakeholder policymaking process seeks to involve all stakeholders, including governments, to achieve policy outcomes with greater speed and flexibility than traditional regulatory structures. Within ICANN, the GAC provides governments a meaningful opportunity to participate in the development of policies related to DNS issues. NTIA represents the U.S. Government in the GAC, which currently has over 100 members.

Over the last six years, NTIA has actively engaged with its counterparts in the GAC in

[2] *See* http://newgtlds.icann.org/applicants/agb.

developing consensus advice to inform ICANN's policy development and implementation program for the introduction of new gTLDs. This included the adoption by the GAC in March 2007 of "GAC Principles Regarding New gTLDs" that were intended to inform the on-going policy development process underway in ICANN's Generic Names Supporting Organization (GNSO).[3] The GAC progressively refined its advice to the ICANN Board and community through a series of communiques issued at the close of each of its meetings between March 2007 and December 2010. This occurred as the new gTLD program advanced from the GNSO policy recommendations that were adopted by the ICANN Board in June 2008 to the implementation proposals developed by ICANN staff and posted serially for public comment.

In December 2010, the GAC developed a "Scorecard" of the outstanding issues governments had with the pending Draft Applicant Guidebook and requested direct discussions between the GAC and the ICANN Board to resolve them.[4] Among these issues were:

- objection procedures for governments,
- procedures for the review of sensitive strings,
- root zone scaling,
- market and economic impacts,
- registry-registrar separation,
- protection of trademark rights and other intellectual property owners,
- consumer protection issues,
- post-delegation disputes with governments,

[3] *See* http://www.icann.org/en/topics/new-gtlds/gac-principles-regarding-new-gtlds-28mar07-en.pdf.

[4] *See* http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf.

- use and protection of geographic names,
- legal recourse for applicants,
- providing opportunities for stakeholders from developing countries,
- law enforcement due diligence recommendations, and
- the need for an early warning mechanism for applicants to identify whether a proposed string would be considered controversial or to raise sensitivities.

Between February and June 2011, GAC representatives from around the world met with the ICANN Board in extended face-to-face discussions to review the GAC Scorecard and to identify specific differences between GAC advice and the existing version of the Applicant Guidebook. The purposes of the sessions were to promote joint understanding of the issues and arrive at an agreed-upon resolution of those differences wherever possible. These unprecedented GAC-ICANN Board exchanges resulted in the adoption by the ICANN Board of a significant number of GAC recommendations in the final Applicant Guidebook. Equally importantly, the GAC's advice established a solid foundation for the subsequent review of the new gTLD program by identifying markers or guideposts of government expectations that the benefits must not be outweighed by risks to users of the DNS.

NTIA believes that ICANN improved the new gTLD program by incorporating a significant number of proposals from the GAC. ICANN's new gTLD program also now provides law enforcement and consumer protection authorities with significantly more tools than those available in existing gTLDs to address malicious conduct. The fact that not all of the GAC's

proposals were adopted as originally offered does not represent a failure of the process or a setback to governments; rather, it reflects the reality of a multi-stakeholder model.

Going Forward

As a member of the GAC, NTIA will continue to actively monitor and participate in discussions related to the expansion of new gTLDs within the ICANN process. NTIA appreciates that certain trademark owners and other stakeholders have expressed concerns regarding the new gTLD program. Safeguarding the rights of trademark owners and ensuring appropriate consumer protections as this process moves forward remains a priority. As applications for strings that are identifiable brands, products, or companies are introduced, it will be important to ensure that trademark owners are properly protected. NTIA is committed to working with the U.S. industry and other stakeholders as the new gTLD program unfolds to mitigate any unintended consequences. The Affirmation sets up continuous multi-stakeholder review teams to evaluate ICANN's performance, including a review of the new gTLD program. This review will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as the effectiveness of the application and evaluation process, and the safeguards put in place to mitigate issues involved in the introduction of new gTLDs. NTIA believes the review provides an opportunity for stakeholders to further refine the new gTLD program and make adjustments, as needed.

In addition, NTIA intends to collaborate with U.S. Government agencies responsible for consumer and intellectual property protection, competition policy, and law enforcement to track their experiences and to coordinate the collection of data regarding the effects on consumers and business users of the domain name system. In particular, NTIA, working with other agencies,

will focus on ensuring that law enforcement concerns are addressed through strengthened Registry and Registrar Accreditation Agreements and enhanced contract compliance. NTIA will also be encouraging all interested parties to collaborate in the development of metrics to facilitate the review of the new gTLD program to which ICANN has committed. We feel strongly that the review must be informed by fact-based, real-time experiences that can be captured by data from a variety of sources.

Conclusion

NTIA is dedicated to maintaining an open, global Internet that remains a valuable tool for economic growth, innovation, and the free flow of information, goods, and services online. We believe the best way to achieve this goal is to continue to actively support and participate in multi-stakeholder Internet governance processes such as ICANN. This is in stark contrast to some countries that are actively seeking to move Internet policy to the United Nations. If we are to combat the proposals put forward by others, we need to ensure that our multi-stakeholder institutions have provided a meaningful role for governments as stakeholders. NTIA believes that the strength of the multi-stakeholder approach to Internet policy-making is that it allows for speed, flexibility, and decentralized problem-solving and stands in stark contrast to a more traditional, top-down regulatory model characterized by rigid processes, political capture by incumbents, and in so many cases, impasse or stalemate.

Thank you again, Mr. Chairman for the opportunity to testify this morning. NTIA looks forward to working with Congress, U.S. business, individuals, and other stakeholders to preserve and enhance the multistakeholder model that has been a hallmark feature of global Internet institutions that have been responsible for the success of the Internet.

I will be happy to answer any questions.

Mr. WALDEN. Ms. Alexander, thank you very much for your testimony and your work at NTIA.

We are now appreciative of Mr. Kurt Pritz, who is going to testify. He is the senior vice president of ICANN.

So, Mr. Pritz, thank you for being here, and we look forward to your comments.

STATEMENT OF KURT PRITZ

Mr. PRITZ. Thank you, Mr. Chairman, Ranking Member, and members of the subcommittee. I am Kurt Pritz, senior vice president for stakeholder relations for ICANN, the Internet Corporation for Assigned Names and Numbers. I am very pleased to be testifying before you today.

After more than 7 years of policy development and implementation planning, on January 12 next year ICANN will start receiving applications for new top-level domains, TLDs, such as today's .com, .org, and .edu. ICANN carefully and cautiously developed the requirements for the new gTLD program. And by ICANN, I mean the global multistakeholder community made up of governments, intellectual property experts, consumers, large and small businesses, not-for-profit organizations, Internet security experts, and Internet users.

The launch of the new gTLD program was part of ICANN's founding mandate when it was formed by the U.S. Government over 12 years ago. The implementation of the new gTLD program under discussion today is the result of a cautious, deliberative, multiyear process on how ICANN will execute on its promise to the NTIA to facilitate competition in the domain name system while protecting vital security, consumer and business interests.

Today's program was refined through thousands of comments in no less than 47 extended comment periods, 1,400 pages of comment summaries and analysis. Every comment was carefully considered and analyzed and addressed over seven versions of the Applicant Guidebook. The program, including enhancements and new protections, was created by over 10 independent expert working groups and described through 59 explanatory memoranda and independent reports and 5 independent economic reports.

The new gTLD program will be implemented in a measured, limited manner. After the 90-day application window for the first round closes, a stringent evaluation process limits new gTLD registries to those entities with the ability to meet the high technical and operational requirements with a capacity to responsibly operate parts of the Internet infrastructure.

That careful review means that the new TLDs, the first new TLDs, will not be operational until early 2013, and delegations will be spread over time after that. The new TLDs that will come in under this program will have significantly increased safeguards compared to TLD registries that exist today. ICANN formed teams of world-class experts who worked to ensure that new TLDs offer more protection for trademark holders and consumers than today's. New trademark protections include a universal trademark clearinghouse, a rapid take-down process, and new methods of recourse against wrongdoers. The new safeguards will sharply reduce the need for defensive registrations.

New TLDs will also bring better consumer and security protections. Domain name abuse experts have developed specific measures to combat malicious conduct and provide law enforcement authorities with more tools to fight malfeasance. These include criminal background checks on all applicants, a requirement for DNSSEC deployment, maintenance of a thick WHOIS database, and centralized access to TLD data.

In the last decade the number of domain name registrations has increased tenfold, enabling more than $3 trillion of commerce annually.

As with the introduction of any innovation, new TLDs will generate interest and excitement and require a period of learning. Internet users have already shown great adaptability, and they will find value when it is created as a result of this program.

What type of innovation is waiting? Dot-brand TLDs are in planning, similar to .gov today that can give consumers immediate trust of the site they are visiting. Your constituents know that when they type a House.gov address, they are reaching the domain managed for the U.S. House of Representatives. Financial industry participants are considering financial services TLDs, where banks and financial institutions can offer their customers greater trust, more secure transactions, and control of the flow of their data. Brand managers see a world of creative opportunity, including TLDs providing dedicated registrations tailored to meet their customers' needs. American jobs are already being created to explore the benefits and opportunities of new TLDs.

The important areas under discussion before the committee today have been the subject of debate and compromise for many years. Together, the Internet community, hearing all the concerns raised at the table today, designed a program where new TLDs will be more secure; offer greater protections for trademark holders; reduce the need for defensive registrations; more effectively combat malicious conduct; and provide competition, innovation, and consumer choice.

Thank you for inviting me to testify. I am happy to answer any questions you have afterward.

[The prepared statement of Mr. Pritz follows:]

TESTIMONY OF KURT PRITZ

SENIOR VICE PRESIDENT, STAKEHOLDER RELATIONS

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)

A CALIFORNIA PUBLIC BENEFIT NONPROFIT CORPORATION

BEFORE THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

HEARING ON ICANN's TOP-LEVEL DOMAIN NAME PROGRAM

DECEMBER 14, 2011

SUMMARY OF TESTIMONY

ICANN's implementation of the New gTLD Program under discussion today is the result of a **cautious, deliberative seven-year process** on how ICANN should execute on its promise to facilitate competition in the Domain Name System while protecting vital security, consumer and business interests. ICANN – the global multi-stakeholder community of governments, intellectual property experts, consumers, large and small businesses, not-for-profit organizations, Internet security experts, and Internet users – refined the Program through **10 independent expert working groups, 59 explanatory memoranda and independent reports, thousands of comments in no less than 47 extended public comment periods, and 1400 pages of comment summary and analysis**. All comments were listened to and taken into account across **seven versions of the *Applicant Guidebook***.

The New gTLD Program will be implemented through a **measured roll-out**. The 90-day application window for this first round opens on January 12, 2012. A **stringent evaluation process limits new gTLD registries** to those entities with ability to meet the high technical and operational requirements, with the capacity to responsibly operate parts of the Internet infrastructure. The first new TLDs will not be operational until early 2013. Delegations will be distributed or spread over time.

World-class experts worked to ensure that new TLDs **offer more protection for consumers and trademark holders than today's TLDs,** with abuse mitigation measures and trademark protections that will sharply reduce the need for defensive registrations.

New TLDs will bring innovation and jobs. Dot-brand TLDs – similar to .GOV today – can give consumers immediate trust of the site they are visiting. Brand managers see "a world of creative opportunity," such as secure financial services TLDs and TLDs providing dedicated registrations tailored to customer needs. American jobs are already being created to explore the benefits and opportunities of new TLDs.

The Internet will continue to grow – the number of registrations has increased nearly ten-fold over the last decade. **New TLDs will be more secure, offer greater protections for trademark holders, reduce the need for defensive registrations, more effectively combat malicious conduct, and provide competition, innovation and consumer choice**.

TESTIMONY

Chairman, Ranking Member and members of the Subcommittee, thank you for the opportunity to address you today. I am here today representing the Internet Corporation for Assigned Names and Numbers (ICANN). I am Kurt Pritz, ICANN's Senior Vice President for Stakeholder Relations. Among other responsibilities at ICANN, I manage the Program to implement new Top-Level Domains (also referred to as new gTLDs), which is the subject of this hearing. Last week, I testified before the United States Senate Committee on Commerce, Science and Transportation on this same topic.[1] I am here today to provide you with a comprehensive background on this topic.

I. New gTLDs: Safely Bringing Competion and Choice to the Internet

On June 20, 2011, ICANN launched the New gTLD Program when ICANN's Board of Directors approved the implementation following years of policy development by the broad Internet community.[2]

The application window for this program will open on January 12, 2012 and close on April 12, 2012. The New gTLD Program is the product of well thought out, thoroughly debated policies that are designed to benefit the billions of Internet users through increased competition, choice and innovation. It is also designed to provide a safer, stable marketplace through the implementation of rights protection mechanisms, malicious conduct mitigation measures and other registrant protections. ICANN listened to all those that wished to participate, across geographies and types of stakeholder. Each issue was thoroughly discussed and debated during the development of the program, and the New gTLD Program represents consensus and the best compromise between the various positions. Now is the time to realize the benefits of an expanded marketplace in the domain name space, with the benefit of the addition of new safeguards.

The New gTLD Program was created through input across all sectors, including Internet end users, global Fortune 500 businesses, small businesses, trade associations, governments, non-commercial interests, intellectual property experts, brand holders, Internet security

experts, ICANN registries and registrars, domain name registrants, Internet service providers, technical experts, not-for-profit organizations and more.

The planning for the New gTLD Program started in 2005 within ICANN's consensus-based policy development process. Since 2008, the New gTLD Program has been shaped through:

- Seven versions of the *Applicant Guidebook*;
- At least 59 explanatory memoranda and independent reports, including 5 economic studies;
- 47 separate, extended public comment periods;[3]
- Over 1450 pages of summary and analysis on public comments received; and
- Input from no less than ten independent expert and community working groups.

EXTENSIVE PROTECTIONS WILL BE INTRODUCED

The New gTLD Program today includes significant protections beyond those that exist in current TLDs, including new mandatory intellectual property rights protection mechanisms, and heightened measures to mitigate against malicious conduct. These new protections are intended to provide a safe, stable Internet, and include:

- New Trademark protections:
    - Uniform Rapid Suspension: A rapid, inexpensive way to take down infringing domain names
    - Trademark Clearinghouse: a one-stop shop so that trademark holders can protect their property right in ALL new TLDs with one registration
    - Mandatory sunrise *and* Trademark Claims processes for *all* new gTLDs
    - The requirement to maintain thick Whois information, provision of centralized access to zone data, and a strong incentive to provide a searchable Whois

database – all to make it easier to find infringing parties

- A post-delegation dispute procedure where rights holders can assert claims directly against TLD registry operators for domain name abuse if the registry has played an active role;

- Measures to mitigate malicious conduct on the Internet, and increase security and stability of the Internet:
  - Background reviews of TLD applicants, including reviews for criminal history (including the use of telecommunications or the Internet to facilitate crimes, illegal sale of drugs, and others);
  - Rejection of applications where the applicant has a pattern of adverse decisions under the UDRP (Uniform Domain Name Dispute Resolution Policy), or has been found to act in bad faith or reckless disregard under cybersquatting legislation;
  - The requirement to have a plan to implement domain name system security extensions (DNSSEC), reducing the risk of "man-in-the-middle" attacks and spoofed DNS records;
  - A requirement to maintain enhanced, or "thick", WHOIS records at the registry level to allow more rapid search capabilities, facilitating efficient resolution of malicious conduct activities;
  - A centralized zone file access system to allow for more accurate and rapid identification of key points of contact within each gTLD. This reduces the time necessary to take corrective action within TLDs experiencing malicious activity;
  - A requirement to establish a single point of contact responsible for the handling of abuse complaints (as requested by law enforcement authorities);
  - Requirements that New gTLD Registry Operators must:
    - Maintain a Continued Operations Instrument sufficient to fund basic registry

operations for a period of three years in case of business failure, to protect consumers and registrants within that gTLD in the event of registry failure.

- Maintain continuity and transition plans, including regular failover testing.
- Cooperate with ICANN In the event transition to a new registry operator is necessary. ICANN will identify an Emergency Back-End Registry Operator to assist in the registry transition process and provide emergency registry services as needed.

OBJECTION PROCESSES

The New gTLD Program includes robust processes to assure that the community as a whole – with particular opportunities for governments and rights holders – has the opportunity to raise objections that could lead to the rejection of applications that may cause:

- User Confusion;
    - Infringement of legal rights, particularly intellectual property rights;
    - Introduction of TLD strings that are contrary to generally accepted legal norms of morality and public order as recognized under principles of international law; and
    - Misappropriation of community names or labels.

In addition, there will be a specialized function, an "Independent Objector" that will act solely in the best interest of the public, and may file an objection to an application that may give rise to the concerns raised above.

RIGHTS AND PROTECTIONS MITIGATE COSTS

The existence of objection processes and enhanced rights protection mechanisms should mitigate the concerns of trademark holders regarding increased costs. With these objection rights, trademark holders have the opportunity to consider if and when they want to apply for a new gTLD on the basis of business strategy and competition because the chance that

another entity will succeed in applying for the trademarked name is reduced. Rights protections mechanisms reduce the need for trademark holders to defensively register names across new gTLDs. Further, we've learned from prior rounds that trademark holders often do not engage defensive registrations in new TLDs.

Additional detail on all of these new protections is provided below.

COMPETITION AND CONSUMER CHOICE

The Board's approval of a program carefully crafted by the global Internet community is consistent with ICANN's mission to increase consumer choice, competition and innovation. Organizations will now have the opportunity to apply for gTLDs in the scripts of world, to open the world's marketplace further and to welcome the next billion non-English speaking users to the Internet.

The opening of new gTLDs will be limited by round and by demand. Two prior rounds of new TLDs have been limited by size or type – and the restrictions hobbled the realization of benefits. Competition results from opening, not limiting markets, and encouraging investment and innovation. The opening of TLDs also is limited by stringent qualification requirements and the finite application window. ICANN has set a high bar, rigorous technical, financial and operational requirements that applicants must meet in order to be eligible. Applying is only viable for those that can demonstrate these requirements. Although the application window opens on January 12, 2012 and closes 90 days later, the first new TLDs will not be operational until early 2013. The first entries will likely be those that are least controverted and the delegations will occur in a distributed way well into 2014. New TLDs will be added as other applicants are able to pass through the scrutiny of objection processes and evaluation. Great care and deliberation is built into this roll-out.

The launch of the New gTLD Program is part of ICANN's mandate to increase competition and innovation in the DNS. The years of development work ensures that the New gTLD Program reflects the balancing of the variety of concerns and voices that have helped to

shape this launch.

This testimony provides information on how and why the New gTLD Program was formed and how it serves the public interest to act now.[4]

II. Introduction of New Top Level Domains Is One of ICANN's Founding Mandates

ICANN is recognized by the world community as the authoritative body for technical coordination and policy development regarding the security, stability and interoperability of the Domain Name System, or DNS, and we work to maintain a single global Internet. ICANN is organized as a California, public benefit, non-profit corporation. We serve this public benefit through a bottom-up, consensus-based, multi-stakeholder model.

A founding mandate for ICANN, included within the United States Government's "White Paper on the Management of Internet Domain Names and Addresses",[5] is to create competition in the domain name market and specifically, to "oversee policy for determining the circumstances under which new TLDs are added to the root system."[6] The introduction of new gTLDs "has been a longstanding goal" of the relationship between the Department of Commerce and ICANN.[7] The relationship formed with the United States Government in 1998, and set out in the many Memoranda of Understanding between the Department of Commerce and ICANN, included a core objective to "Define and implement a predictable strategy for selecting new TLDs."[8] This fundamental assumption that increasing the number of gTLDs will increase competition resulted in the House Committee on Energy and Commerce initiating a 2001 hearing regarding the potential detrimental effects to competition when ICANN approved only seven of 200 applied-for TLDs in an earlier application round.[9]

III. The ICANN Model At Work: How ICANN Approved the Expansion of New gTLDs

A. <u>ICANN's Multi-Stakeholder Model</u>

ICANN's processes and policy development depend on the engagement of stakeholders around the world. Stakeholders participate in many ways, including participation in the policy development processes, in public comment processes, on advisory committees, and in ICANN's

public meetings.

ICANN's model is based on the principle of reaching consensus solutions to difficult problems.[10] Consensus within ICANN does not mean unanimous community support on every issue. The Internet community brings a wide range of viewpoints to the discussions, often with diverging interests. Reaching a thoughtful, negotiated solution that is acceptable to most, and ensures that all viewpoints are considered – that is what ICANN strives to do and has done with this program.

As part of this process, ICANN brings together working groups of experts to recommend solutions for further community review. ICANN works closely with all stakeholders to form consensus-based and community-vetted solutions.

These vital discussions give all interests – including those representative of my fellow panelists – a seat at the table.

ICANN has noted the PR campaign driven by industry groups against the New gTLD Program, and the revisionist history they present.

The six-year inclusive policy development process that led to approval of this Program gave all sectors and industries ample opportunity to contribute their thoughts and convey their concerns. The concerns raised by this group of stakeholders were considered, debated and addressed along with those of many other stakeholders. The record is clear that changes have been made based upon their input.[11]

They are now asking you to give them another bite at the apple. After working for years within their communities to obtain significant concessions in the New gTLD Program for intellectual property rights holders, they now seek to upset the carefully crafted compromise of which they were a part. They now want ICANN to restart the clock, at the expense of the other important participants who negotiated in good faith and have stuck to their end of the bargain.

Lawrence E. Strickling, Assistant Secretary of Commerce for Communications and Information of the National Telecommunications and Information Agency, U.S. Department of

Commerce, cautioned that this "collateral attack" on the multi-stakeholder-approved New gTLD Program poses significant risks to *all* who support ICANN's multi-stakeholder model as the preferred means of addressing Internet policy issues:

> [A]t ICANN, a multistakeholder process that ran for six years resulted in the approval last summer of an expansion of top level domains. This process involved global stakeholders from the business community, civil society, registries, registrars, and governments. At NTIA, we worked throughout the process to make sure that ICANN adequately addressed government concerns.
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> ***
>
> Nonetheless, we are now seeing parties that did not like the outcome of that multistakeholder process trying to collaterally attack the outcome and seek unilateral action by the U.S. government to overturn or delay the product of a six-year multistakeholder process that engaged folks from all over the world. **The multistakeholder process does not guarantee that everyone will be satisfied with the outcome.** But **it is critical to preserving the model of Internet governance** that has been so successful to date **that all parties respect and work through the process and accept the outcome once a decision is reached.** When parties ask us to overturn the outcomes of these processes, no matter how well-intentioned the request, they are providing "ammunition" to other countries who attempt to justify their unilateral actions to deny their citizens the free flow of information on the Internet. This we will not do. There is too much at stake here. [Emphasis added.][12]

B. New Generic Top Level Domains – The ICANN Model at Work

The New gTLD Program demonstrates the strength of the bottom-up, multi-stakeholder process: The New gTLD Program under discussion today is the implementation of an ICANN-community policy recommendation to achieve one of ICANN's foundational mandates.[13] ICANN has worked closely with the community in building policy and an implementation plan.

1. The New gTLD Program: Formed through Community Engagement

From 2005 - 2007, business and commercial users, contracted registries and registrars, intellectual property interests, non-commercial users and the at-large Internet community to conduct an intensive formal, Bylaws-defined policy development process on the addition of new gTLDs. After intensive policy discussion, *all* those constituency groups concluded that new gTLDs should be made available.

The principles guiding the new gTLD policy development process included that:

- new gTLDs will benefit consumer choice and competition;
- the implementation plan should also allow for Internationalized Domain Names (domain names that are written solely in a non-ASCII script, such as Chinese or Cyrillic) at the top level;
- the introduction of new gTLDs should not cause security or stability issues;
- applications must be assessed in rounds until the scale of demand is clear; and
- protection of various appropriate interests requires objection and dispute resolution processes.

In 2008, the ICANN Board approved the policy on the introduction of new gTLDs[14] and directed its implementation. Since October 2008, ICANN has produced all of the documentation cited above – seven versions of the *Applicant Guidebook* (detailing the guidelines and requirements for the evaluation process) as well as numerous reports and memoranda. All have been the subject of public comment and vigorous debate. Anyone and

everyone can join in; indeed, the process at times has been noisy given the numbers of contributors and divergent views.

Nearly every ICANN Supporting Organization and Advisory Committee was represented in targeted community-based working groups or expert teams formed to address implementation issues, as were representatives from all sectors of society.

The gTLD policy-making body, the Generic Names Supporting Organization, and its component stakeholder groups and constituencies participated in all aspects of the implementation work arising out of its policy recommendations. The Country Code Names Supporting Organization, representing ccTLD operators, was particularly active on issues relating to internationalized domain names (or IDNs) in the New gTLD Program.

ICANN's technical Advisory Committees provided direct input into the implementation work. For example, Root Server System operators and Security and Stability Advisory Group members provided information – in response to initial concerns and questions – that there is no expected significant negative impact of new gTLDs on the stability and scalability of the root server system.

Members of the At-Large Advisory Committee – the home within ICANN for individual Internet users – served on nearly every working group and team, giving the world's Internet users a voice in implementation discussions. The At-Large Advisory Committee has been an active participant in the formal public comment process.

(a) Governments Provided Advice and Engaged In Broad, Substantive Consultations on New gTLDs

ICANN's Governmental Advisory Committee, made up of over 110 of the world's governments, including the United States of America, has been deeply and effectively involved in the development of the New gTLD Program. The Governmental Advisory Committee also coordinated information exchanges between law enforcement and ICANN.

The ICANN Board and the Governmental Advisory Committee held series of landmark

consultations on the New gTLD Program.

Through accommodations made by both sides,[15] changes were made to the New gTLD Program in each of twelve identified areas including:

- more rigorous trademark protections (making them mandatory and transferring costs to wrongdoers),
- providing an objection path for governments to avoid delegation of sensitive TLD applications,
- agreement on a post-delegation economic study to test the results of first set of new gTLDs,
- agreement that a post-launch study should be conducted on the effectiveness of new trademark protections and any effects on root zone operations, and
- development of a process for assistance for needy applicants.

Ultimately, mutual agreement among the Board and the Governmental Advisory Committee was reached that, subject to Board approval, the New gTLD Program would proceed to launch, and the process would be self-improving through subsequent studies.[16]

(b) Law Enforcement Agencies Are Active Contributors to the New gTLD Program Work

Law enforcement agencies worldwide have worked closely with ICANN in the new gTLD implementation process, with a goal of reducing domain name abuses. Representatives of U.S. law enforcement agencies played a critical role in proposing standards for background screening for applicants. Law enforcement agencies worldwide, including the FBI, the UK Serious Organized Crimes Agency (SOCA) and the Royal Canadian Mounted Police, supported proposals to aid in the prevention and disruption of efforts to exploit domain name registration procedures for criminal purposes. DNS abuse and security are regularly the subject of collaborative meetings between ICANN and the US law enforcement community, as well as representatives of international agencies.[17] ICANN expects this successful collaboration to

continue. To that end, there are formal DNS Abuse sessions at every ICANN public meeting where ICANN and law enforcement representatives come together to advance this important work.

(c) Large and Small Businesses and Corporations Have Helped Shape the Program

Business and industry representatives have participated in the new gTLD implementation process from the beginning, through the GNSO's Business and Commercial Users Constituency, through trade organizations and individually, and remain involved today. Participation cuts across business size and geography. Many global trade associations and corporations have participated in the online comment forums, either individually or through coordinated responses; similarly, great numbers of small businesses have been active. And the involvement continues.

For example, representatives of Microsoft, Google, Time Warner and the BBC are active members of a current community group working to refine the implementation of the Trademark Clearinghouse, one of the new rights protection mechanisms being launched. Representatives of large and small business have been integral in forming the heightened rights protection mechanisms described above, and have contributed to the development of other portions of the program, including participation in many community working groups.

(d) Intellectual Property Owners / Brandholder Experts have been Involved at Every Step

Members of ICANN's Intellectual Property Constituency actively participated in the policy development concerning the introduction of new gTLDs, including the recommendation that new gTLD "strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law" that was included in the 2007 Final Report approved by the Board.

In March 2009 ICANN formed a team of 18 intellectual property experts from around the world representing the interests of trademark holders, business and trade associations[18] –

the Implementation Recommendation Team (IRT).[19] The IRT's work led to the identification of specific rights protection mechanisms that are now included in the *Applicant Guidebook* based on the community and the Governmental Advisory Committee's further input and guidance.

(e) Additional Subject Matter Experts Formed Teams to Combat Malicious Conduct and Strengthen Registrant Protections.

In addition to the regular participants in its processes, the ICANN model affords opportunities for experts to provide assistance on particularly challenging topics. ICANN has access to and the ability to form world-class expert groups, for example:

- The Implementation Recommendation Team and Special Trademark Issues team created rights protection mechanisms;
- A Zone File Access Advisory group set out standardized access zone file information to simplify access for those investigating abuses;[20]
- The Security and Stability Advisory Committee discussed tools to mitigate the potential for malicious conduct. Its report provided guidance into the management of glue records;[21]
- A High-Security Zone TLD Advisory Group was formed within ICANN in response to requests from governments and the financial services sector to create higher security requirements for TLDs where users have expectations of higher security;[22]
- The Joint Applicant Support Working Group addressed support for needy applicants, work is now reflected in the offering of a significant fee reduction for qualifying applicants in the first round of the New gTLD Program;[23]
- The Joint ccNSO-GNSO IDN Working Team discussed issues related to Internationalized Domain Names;[24]
- The Vertical Integration Working Group addressed community solutions to the issue of Registry-Registrar cross ownership;[25]

- The Temporary Drafting Group recommended enhancements to the new gTLD Registry Agreement and post-delegation dispute resolution procedures;[26] and
- The Implementation Assistance Group, comprised of over 50 members representing various perspectives such as intellectual property interests and Registry Operations, are assisting ICANN in implementing specified Clearinghouse processes.[27]

Each group worked openly and transparently, and produced reports available for public comment.

Importantly, ICANN listened to and acted on all work produced by the experts and the more general community and modified *Applicant Guidebook* sections to implement the results of this work.

(f) Economic Studies Confirm Overall Benefits of Opening the DNS; Further Studies Would Offer No Benefit

Several expert economic studies have recognized that the fundamental benefits of increased competition (that apply in almost all markets) will also benefit Internet users through enhanced service offerings, competition, innovation and consumer choice in the domain name market.

As the new gTLDs moved closer to launch, there were calls for economic studies to better document the fundamental assumption that increasing the number of gTLDs will increase competition. In response, ICANN commissioned five economic studies that examined anticipated benefits and costs of the New gTLD Program, the effects of price constraints, and the benefits of vertical integration. All support a conclusion that Internet users stand to benefit from the introduction of new gTLDs.

Those studies are:

- Dr. Dennis Carlton, Report Regarding ICANN's Proposed Mechanism for Introducing New gTLDs, *at* http://www.icann.org/en/topics/new-gtlds/carlton-re-proposed-mechanism-05jun09-en.pdf ("Carlton I");

- Dr. Dennis Carlton, Preliminary Analysis Regarding Price Caps for New gTLD Internet Registries, *at* http://www.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf ("Carlton II");
- CRA International, Revisiting Vertical Separation of Registries and Registrars, *at* http://www.icann.org/en/topics/new-gtld-crai-report-24oct08-en.pdf;
- Michael Katz, Gregory Rosston and Theresa Sullivan, An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names, *at* http://www.icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf ("Katz/Rosston Phase I"); and
- Michael Katz, Gregory Rosston and Theresa Sullivan, Economic Considerations in the Expansion of Generic Top-Level Domain Names, at http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf (Katz/Rosston Phase II).

The two Katz/Rosston reports were commissioned by ICANN to directly address remaining community questions on the potential costs and benefits of the expansion of the gTLD space. Performed in two phases, Phase I provided a survey of published studies and resources on the potential impacts of new gTLD introduction and examined theoretical arguments on the benefits and costs of increased numbers of TLDs. Phase II provided reports of empirical studies proposed in Phase I, to help assess costs and benefits of new gTLDs.

Katz's and Rosston's work was consistent with the basic findings of the three previous reports, and supported an open approach in which new gTLDs are added to the root, subject to appropriate restrictions and mechanisms (such as rights protection mechanisms) designed to minimize potential costs to trademark holders and others. As discussed above – and as referenced in Katz's and Rosston's work – ICANN has adopted these restrictions, as seen in the inclusion of significant rights protection mechanisms.

What remains clear, as stated by Dr. Carlton, a noted economics professor and former

Deputy Assistant Attorney General for Economic Analysis, Antitrust Division, U.S. Department of Justice, from October 2006 through January 2008, is that any resultant *delay of the launch of the New gTLD Program "is likely inconsistent with consumer interests" and could "substantially reduce [consumer] welfare*." [Emphasis added.][28]

Dr. Carlton explained, "ICANN's plan to introduce new gTLDs is likely to benefit consumers by facilitating entry which would be expected both to bring new services to consumers and mitigate market power associated with .com and other major TLDs and to increase innovation."[29] Delay will inhibit competition in the use of generic, non-trademarked terms, and runs counter to the generally accepted view that market entry benefits consumers by expanding output and lowering price. Potential innovations in the new gTLD namespace will be stifled if limitations to entry are imposed, which would "essentially freeze the number of TLDs fifteen years after the first commercial development of the Internet."[30]

Calling for a delay in the entry of new gTLDs serves to perpetuate existing market conditions: concentration within some existing registries, most generic strings unavailable, and those that trade on the value of the current marketplace holding portfolios based upon the value of current .COM names.[31]

ICANN's Board and the Governmental Advisory Committee agreed that further economic study would not be beneficial.[32] Instead, the focus turned to the collection of information that will inform the analysis of the effects of the introduction of new gTLDs after the first round. The *Applicant Guidebook* now includes application questions to collect information relating to the stated purposes and anticipated outcomes of each application, for use in later studies.

During the previous Senate Hearing, one of those testifying indicated that they had produced a new economic study demonstrating a negative impact on brand owners and businesses. The study has not been provided to ICANN and is clearly a last minute effort to sway the views of those in government rather than a meaningful attempt to alter the policy within the policy process. The purported conclusions of this uncirculated study are contradicted

by publicly available and vetted studies including the statistically-based "Analysis of Domain Names Registered Across Multiple Existing TLDs and Implications for New gTLDs,"[33] and "An Analysis of Trademark Registration Data in New gTLDs,"[34] concluding that high numbers of defensive registrations in new gTLDs will not occur.

IV. The Protections In the New gTLD Program are Substantial

The implementation of the community's policy for the New gTLD Program looks entirely different today than in October 2008. The many revisions to the *Applicant Guidebook* incorporated recommendations and addressed concerns raised by intellectual property holders, governments, law enforcement and security experts, technical experts, business interests, non-commercial interests, individual Internet users, and others.

Below are highlights of the results of the community's work.

A. Trademark Protection: New gTLDs Will Have Robust Rights Protection Mechanisms (RPMs) to Protect Marks and Combat Cybersquatting

New gTLDs will have significant RPMs that don't exist in current gTLDs.

The RPMs will help rights holders protect trademarks efficiently, in terms of both time and money. When new gTLDs launch, trademark holders will have the opportunity to register their trademarks in a single repository that will serve *all* new gTLDs, the Trademark Clearinghouse. (Currently, trademark holders go through similar rights authentication processes for *each separate* top-level domain that launches.)

New gTLD registries are required to use the Trademark Clearinghouse in two ways. First, they must offer a "sunrise" period – a pre-launch opportunity for rights holders to register names in the new gTLD prior to general registration. Second, a Trademark Claims service will notify rights holders ("Trademark Claims") of domain name registrations that match records in the Clearinghouse for a period of time at the beginning of general registration.

The Trademark Clearinghouse will increase protections, as well as reduce costs for trademark holders and start-up registries.

Also with new gTLDs comes the advent of the Uniform Rapid Suspension system (URS), a streamlined version of the Uniform Domain Name Dispute Resolution Policy (UDRP) process, allowing trademark holders a quicker and simpler process through which clear-cut cases of infringing registrations at the second level can be "taken down." The URS and the current UDRP will remain mandatory within new gTLDs.

New gTLDs offer protections to trademark holders in the event a registry is actively involved in domain name abuse. The Post-Delegation Dispute Resolution Procedure (PDDRP) provides a mechanism to make claims directly against registries affirmatively involved in abuses involving domain name registrations.

These RPMs are contemplated to address the issues raised in the economic studies as a means of reducing the potential costs associated with the introduction of new gTLDs.[35] Opponents of the new gTLD process have mischaracterized the fact that economists identified specific areas of risk that could be mitigated (such as intellectual property protection costs) as a conclusion that the New gTLD Program will result in net economic harm. As ICANN has explained previously, that is an unsupported reading of the economic studies. The economists noted the benefits of innovation, competition and choice, and concluded that risks and costs could be mitigated through the implementation of RPMs and other mechanisms such as malicious conduct mitigation measures.

The rights protection mechanisms in the *Applicant Guidebook* provide trademark holders with an alternative to engaging in defensive registrations.[36] The provision of effective rights protection mechanisms is shown to reduce the need for trademark holders to engage in defensive registrations – but the rights protection mechanisms cannot be too strict, or the growth of a new TLD may be impaired.[37] Unsubstantiated fear of forced defensive registrations is not sufficient reason to stall new gTLDs and delay the benefits of introducing competition into the DNS.

In addition, economic studies refuted the claims that costs of defensive registrations in new gTLDs will be prohibitive. Independent studies support the conclusion that as defensive

registrations are made in proportion to the popularity of the gTLD, the large majority of defensive registrations are in .COM and .NET.[38] Only if a new gTLD is very popular is there likely to be any need for defensive registrations. But, it also follows that if a new gTLD is popular, then it likely is delivering high benefits. Thus, the dual claims of low benefits and high defensive registration costs are unlikely to be simultaneously true.

B. Consumers Will Be Protected Through Efforts to Mitigate Malicious Conduct

The expert and community work to address the potential for increased malicious conduct in new gTLDs has generated many enhanced protections in the *Applicant Guidebook*. With the assistance and involvement of external experts such as the Anti-Phishing Working Group, the Registry Internet Safety Group, members of the Forum of Incident Response and Security Teams (FIRST), and others from the Internet security first responder community, nine specific mechanisms were developed that will improve consumer protection[39] and enhance the public interest. They include:

- Prospective registry operators will be appropriately reviewed for criminal history according to established criteria, including the use of telecommunications or the Internet to facilitate crimes, illegal sale of drugs, violation of the UN Convention against Transnational Organized Crime and others. Where the applicant has a pattern of adverse decisions under the UDRP (Uniform Domain Name Dispute Resolution Policy), or has been found to act in bad faith or with reckless disregard under the US Anti-cybersquatting Consumer Protection Act (ACPA) or equivalent legislation, applications will be rejected.
- Each new gTLD will be required to have a plan to implement domain name system security extensions (DNSSEC), reducing the risk of "man-in-the-middle" attacks and spoofed DNS records.
- Enhanced, or "thick" WHOIS records at the registry level will allow more rapid search capabilities to facilitate efficient resolution of malicious conduct activities.

- A centralized zone file access system allows for easier dissemination of registrant data, reducing the time necessary to take corrective action against registrants.
- All new gTLD operators are required to establish a single point of contact responsible for the handling of abuse complaints. This requirement is a fundamental step in successfully combating malicious conduct within new gTLDs.

Mitigating malicious conduct is and will continue to be an overarching issue within the new gTLD space. The participation of experts has produced mechanisms to benefit all Internet users, providing means for safer online interactions. The contributions of the Governmental Advisory Committee and law enforcement representatives broadened the scope of these protections.

C. Registrant Protections Regarding Registry Operator Continuity and Compliance

In addition to the protections in existing gTLDs, such as data escrow provisions, and participation in Contractual Compliance investigations, there are notable new protections in the New gTLD Program regarding the activities of Registry Operators. New gTLD Registry Operators must:

- Maintain a Continued Operations Instrument sufficient to fund basic registry operations for three years in case of business failure, to protect consumers and registrants within that gTLD in the event of registry failure.
- Maintain continuity and transition plans, including regular failover testing. In the event transition to a new registry operator is necessary, the registrar is obligated to cooperate with ICANN. ICANN is working to identify an Emergency Back-End Registry Operator to assist in the registry transition process and provide emergency registry services as needed. The continuity and transition planning mitigates the potential risk of consumer losses due to registry failure raised within the economic studies.[40]

D. Objection Processes Empower the Public and Governments

After the application round closes, information on applied-for gTLDs will be made public. At that time, entities and individuals can review the list of strings and consider if they wish to object to any individual application.

The New gTLD Program allows the Governmental Advisory Committee to inform ICANN that there are concerns with an application. Depending on the level of support within the GAC, the advice may result in a presumption that the Board should not approve the application.

There are also four formal objection processes that can be initiated by the public, each administered by a well-known international dispute resolution service provider and protecting against:

- Internet User Confusion;
- Infringement of legal rights, particularly intellectual property rights;
- Approval of new TLDs that are contrary to generally accepted legal norms of morality and public order as recognized under principles of international law; and
- Misappropriation of community names or labels

In addition, an Independent Objector will be appointed with the ability to file objections in certain cases where an objection has not already been made to an application that will infringe the interests listed above. The Independent Objector will act solely in the best interest of the public.

V. ICANN is Committed to an Orderly Implementation of the First Round of the New gTLD Program

ICANN's role in the New gTLD Program is to ensure that the program is fairly, objectively and successfully implemented.

A. ICANN Is Operationally Ready to Administer the New gTLD Program

ICANN's New gTLD Program Office: ICANN will operate a timely, predictable, transparent, consistent program. ICANN is working to ensure operational readiness for an orderly implementation, including enhanced security for the application and evaluation systems to prevent inappropriate access to the infrastructure or data.

Evaluation service providers have been selected: Each has the global and technical knowledge and resources to accomplish the planned work. The gTLD Program Office includes separate quality assurance, governance, systems and customer service functions. Evaluation service providers are completing training to normalize scoring procedures.

ICANN-Provided Services: ICANN has developed detailed staffing plans for all services to ensure adequate administration and enforcement of its agreements, and for addressing needs the new environment. Particular focus is being paid to contractual compliance, IANA and other functions that formally interface with gTLD registries and registrars.

Creation of new systems: ICANN is creating new business systems that will contribute to its ability to administer this program. Examples include the TLD Application System, contractual compliance tracking, and root zone management automation.

B. The First Round is Limited in Delegation Rate And Incorporates Other Measures to Assure Root Zone Security and Stability

ICANN's paramount mission is to ensure the security, stability and resiliency of the Domain Name System. ICANN's technical community has reported that new gTLDs, in the numbers contemplated, represent no risk to the safe, stable operation of the Internet's root zone. In furtherance of its mission, ICANN has made commitments regarding the size and staging of the first round.[41] ICANN also makes the following commitments:

- The impact of first round delegations on root zone stability will be studied.
- Although extremely unlikely, ICANN is committed to slowing or halting the program to preserve stability if the root server system shows signs of stress.[42] ICANN will use

dedicated communications and monitoring systems to assure quick action.

C. ICANN is Committed to a Second Round of the New gTLD Program, Taking into Account Community Comment

One of the initial policy recommendations arising out of the Generic Names Supporting Organization is that, "[t]his policy development process has been designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains. The Request for Proposals (RFP) for the first round will include scheduling information for the subsequent rounds to occur *within one year*. [Emphasis added.]"[43]

The application round opening on January 12, 2012 is for those entities that are ready to participate in the expansion of choice and innovation in the DNS. There are many who may not be ready, or want to view the progress of the first round prior to taking a decision. They should not feel compelled to participate in the first round – future opportunities will exist.

ICANN is working to identify a clearer timeline for the second round. We have heard the calls from many in the community that certainty in the timing of the second round will reduce some of the pressure to apply in the first. ICANN has agreed with governments and trademarks holders that a second round should occur only after:

- Studying the impact of first round delegations on root zone stability.
- Conducting a post-first round study on whether new trademark protections should be adjusted.

The first new gTLDs are expected to be operational in early 2013 (followed by gradual delegation as applications progress through the evaluation process) and ICANN will undertake these studies at the earliest opportunity as is practicable – as soon as meaningful data is available.

D. Innovation and Jobs are Waiting

Many new businesses have been formed based on progress in implementing this Internet community-developed program. Some are potential applicants; some will "provision"

applicants. For at least the past two years, future applicants have attended ICANN meetings, passing out marketing materials with their "dot-*NEWDOMAIN*" prominently displayed. Consulting businesses to advise applicants have arisen. Over *120* persons or entities have publicly announced their intention to apply for new gTLDs. Nearly 90 declared applicants have active websites marketing their new gTLD idea proposing all types of gTLDs – city names, community ideas, branding opportunities for internationally known corporations and others. American jobs are already being created, and more will be when the program becomes a reality.

What are some of the possibilities? Others have offered the following. Think of the trust that your constituents have when visiting a .gov website, and the assurance they have that when they visit a page ending in house.gov, they are accessing information about the House of Representatives. This is similar to what American businesses can provide to their customers around the world with a .brand TLD. Or consider a TLD operated by the financial-services industry, providing an easy way for consumers to identify that they have reached a site where they can expect high security for their online financial transactions. Just last week, a major global advertising agency released an article suggesting even more ways that the New gTLD Program opens a "new world of creative opportunities for brands."[44]

We will never know the opportunities and creativity that will come through the introduction of new gTLDs until we move forward. When ICANN was in its infancy, who could have predicted the online possibilities we take for granted today? Since 1999, the Internet has generated new companies and innovative ideas including marketplaces for commerce, communications and social networking: Facebook, Google and Twitter. New gTLDs hold that same potential for innovation.

VI. ICANN Is a Reliable Steward of the DNS

ICANN continues to accomplish much for the benefit of the global Internet community beyond the New gTLD Program. Recent achievements include:

A. **Fulfilling the Affirmation of Commitments**

On September 30, 2009, ICANN and the US Department of Commerce executed the Affirmation of Commitments, a landmark agreement. The Affirmation institutionalizes ICANN's technical coordination role and the US Government's commitment to the multi-stakeholder model. The Affirmation also sets out specific commitments on accountability, transparency and the interests of global Internet users; preservation of DNS security, stability and resiliency; promotion of competition, consumer trust and consumer choice; and enforcement of Whois policies. These commitments are woven into ICANN's ongoing work.

ICANN dedicates significant time and resources to meeting its commitments under the Affirmation and continues to build on the significant progress it has already made. The Affirmation is not just a reflection of the Department of Commerce's commitment to the multi-stakeholder model; it is ICANN's commitment to the global Internet community to operate with *greater* accountability and transparency.

What has ICANN achieved to date?

- In coordination with the community, ICANN has initiated the three reviews called for in the Affirmation: Accountability and Transparency; Security and Stability; and Whois.
- Within weeks of completion of the public comment period on the Final Report of the Accountability and Transparency Review Team (ATRT),[45] staff completed detailed implementation plans to meet the recommendations. The Board has decided that all recommendations should proceed to implementation, and the committees of the Board have been active in oversight of ATRT implementation.
- ICANN is now:
    - Publishing translations of Approved Resolutions for all Board meetings and of the Minutes of Board meetings.
    - Developing and posting the rationale for Board actions. This includes rationales for all new gTLD-related actions in 2011, including the Board's decisions on

Registry-Registrar Cross Ownership, and the Completion of Economic Studies, and eight additional rationale papers produced to accompany approval of the New gTLD Program.

- Posting Board Briefing Materials along with the Minutes of each Board meeting, as well as Guidelines for the Posting of Board Briefing Materials to better explain the redaction process.
- Using a standardized public comment template to allow for easier understanding and identification of the items posted for comment.
- Refining the public comment process to allow for comment and reply cycles.
- Consulting with the Governmental Advisory Committee on implementation of GAC-related ATRT recommendations, including work to create a publicly-accessible registry of GAC advice.
- Including a template for the submission of Reconsideration Requests, as well as maintaining clearer status of Reconsideration Request ICANN's website.
- Continuing to evaluate of the work of an Independent Valuation Expert regarding on Board-member compensation (an ATRT recommendation).
- Designing the appropriate scope of an independent expert review of ICANN's accountability mechanisms.

ICANN is committed to meeting all of its commitments under the Affirmation of Commitments, and will continue to report on the status of that work through the ICANN website.

B. Conflicts of Interest Policy Refinements and Enhancing ICANN's Ethical Culture – Towards a Gold Standard

ICANN maintains a strong policy regarding the identification and handling of Board member conflicts of interest, as well as a Code of Conduct setting out the ethical standards to

which Board members are expected to adhere.[46] In addition, all ICANN staff are bound by a conflicts of interest policy. Prior to the June 2011 approval of the New gTLD Program, ICANN's President and CEO issued a public call that the era of New gTLDs requires ICANN to be even more vigilant in addressing conflict of interest issues.

Work is now well underway with towards strengthening conflicts and ethics practices. ICANN intends to meet or create a gold standard for not-for-profit organizations. This work includes: (1) review of Conflicts of Interest Policy and Code of Conduct by one of ICANN's main outside counsel, to identify proposed revisions; (2) a review of ICANN's Conflicts of Interest Policy, Code of Conduct and other governance documents by new counsel who are expert in governance issues; and (3) compiling a panel of international ethics experts to recommend enhancements to ICANN's ethical culture after a review a of standards from similar organizations from around the world.

The ICANN Board voluntarily adopted a stricter conflicts of interest practice for New gTLD-related decisions, which has already been used during ICANN's Board Meeting last week in advance of the launch of the application window. The additional provisions also include restrictions on future employment with any TLD for which a Board member participates in voting on its application. ICANN staff are subject to restrictions regarding contact with potential New gTLD applicants, and are prohibited from accepting any gifts, meals or entertainment from potential New gTLD applicants.

C. Registrar Accreditation Agreement Amendments

ICANN and its accredited registrars are currently negotiating a series of amendments, many addressing concerns raised by law enforcement authorities from around the world. The negotiation team has agreed to a demanding schedule to achieve a set of amendments for consideration at ICANN's next public meeting in March 2012. The team has already agreed in principle to the incorporation of some of the heightened protections that will be imposed on registry operators within the New gTLD Program, such as the maintenance of an abuse point of contact. All of the newly adopted and heightened consumer and law enforcement protections

will be in place in time for the entry of the first new gTLDs into the root in early 2013.

The negotiations team is providing regular updates on the status of negotiations, available at https://community.icann.org/display/RAA/Home.

D. Internationalized Domain Names

In October 2009, ICANN approved the IDN ccTLD Fast Track Process through which countries and territories around the world can apply for TLDs in character sets other than Latin-based script.[47] Through this process, 30 IDN ccTLDs are now available on the Internet [48] with more on the way.

E. DNSSEC

The Internet is becoming more secure. Following years of development and testing, on July 15, 2010, ICANN, in partnership with VeriSign and the US Department of Commerce, published the root zone trust anchor and a signed root zone became available.[49] The implementation of DNSSEC (or DNS Security Extensions) will allow Internet users to know with increased certainty that they have been directed to the website they intended. This technology will help eliminate a whole class of security threats to the Internet.

ICANN is in active engagement with all registry operators to encourage adoption. As a result, over 75 gTLDs and ccTLDs now deploy DNSSEC; most significantly, the .COM registry adopted DNSSEC on March 31, 2011. DNSSEC will be mandatory in all new gTLDs.

ICANN's work as the DNSSEC Root Zone Key Signing Key (RZ KSK) Manager recently achieved an unqualified SysTrust Certification following an audit to ensure appropriate internal controls are in place to meet the availability, processing integrity and security objectives for the RZ KSK System. ICANN will renew its certification annually.

F. Continued Enforcement of Registrant Protections

Another achievement for the benefit of the global Internet community is the continuous improvement in contractual compliance work. ICANN remains vigilant in its contractually-based consumer protection work and has strengthened the compliance team. The contractual

compliance team has nearly doubled compliance-dedicated staff during the past year, and will continue to grow the function prior to the launch of the first new gTLD. Also, the team has significantly increased multiple-language proficiency to more effectively communicate with its diverse group of contracted parties on compliance-related matters.

Since 2008, ICANN has either terminated or denied renewal of 43 accredited registrars, and issued thousands of compliance notices. Other significant progress includes the relatively recent implementation of registrar data escrow where all registrar data is escrowed by ICANN so that in the event of a registrar failure or termination, the data can be transferred to a successor registrar in order to protect registrants and their web sites. Over 99% of gTLD registrations are covered by ICANN's registrar data escrow agreements.

ICANN continues to explore ways to identify registrar noncompliance early, take action swiftly to bring registrars back into compliance and terminate those that undermine the domain name registration process. This compliance activity helps ensure a healthy Internet ecosystem.

In early 2011, ICANN enhanced its Whois Data Problem Report System (WDPRS), a system that contributes to Whois accuracy.

VII. Conclusion

The ICANN community has worked tirelessly to create a New gTLD Program that will introduce competition and innovation at the top level of the DNS in a way that preserves security and stability, and enhances protections when compared with existing TLDs. Thousands of pages have been carefully written, balancing expert analyses, independent study, and thousands of comments. Governments have provided advice; professionals have weighed in. The new gTLD implementation program represents opportunities for innovation and enhanced competition, with a future of stronger rights protections, stronger consumer protections, and measured paths forward to future rounds.

Thank you for the opportunity to address this Committee. I look forward to answering any questions that you have during the hearing.

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[1] The record of the U.S. Senate Committee on Commerce, Science and Transportation's December 8, 2011 hearing on ICANN's Expansion of Top Level Domains is available at

[2] ICANN Board Resolution 2011.06.20.01, at http://www.icann.org/en/minutes/resolutions-20jun11-en.htm.

[3] Comments came from multiple sources, including: NGOs and not-for-profit organizations, such as the Red Cross and the International Olympic Committee (IOC); governments, through the GAC and individually; ICANN's constituencies, Supporting Organizations and Advisory Committees; brand/mark holders, such as Microsoft, Yahoo, Time Warner, AT&T, BBC, and IBM; industry associations, such as International Trademark Association (INTA), World Intellectual Property Organization (WIPO), European Communities Trademark Association (ECTA), and the American Banking Association (ABA); individuals; small businesses/entrepreneurs and many other groups.

[4] ICANN has had the opportunity to testify before the House Committee on the Judiciary, Subcommittee on Intellectual Property, Competition and the Internet in September 2009 and May 2011 regarding the New gTLD Program. Information on those proceedings are available at http://judiciary.house.gov/hearings/hear_090923.html and http://judiciary.house.gov/hearings/hear_05022011.html.

[5] United States Department of Commerce, *White Paper on the Management of Internet Domain Names and Addresses* ("White Paper"), *at* http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm (June 6, 1998)

[6] *Id.*

[7] Testimony of Fiona Alexander, Associate Administrator, National Telecommunications and Information Administration, June 4, 2009, before the Subcommittee on Communications, Technology, and the Internet, Committee on Energy and Commerce, United States House of Representatives, available at http://www.ntia.doc.gov/speechtestimony/2009/testimony-associate-administrator-fiona-alexander-issues-concerning-internet-co.

[8] *See, e.g.,* Amendment 6 to Memorandum of Understanding Between the U.S. Department of Commerce and The Internet Corporation For Assigned Names And Numbers, *at* http://www.ntia.doc.gov/ntiahome/domainname/agreements/amendment6_09162003.htm (Sept. 16, 2003).

[9] *See* Transcript of February 8, 2001 Hearing before the Subcommittee on Telecommunications and the Internet of the Committee on Energy and Commerce, House of Representatives, On Hundred Seventh Congress, First Session, *available at* http://archives.energycommerce.house.gov/reparchives/107/hearings/02082001Hearing37/print.htm ("some view ICANN's approval of only a limited number of names as thwarting competition").

[10] While my testimony today focuses on implementation of community-driven policy recommendations, the ICANN model is also used in non-policy matters.

[11] For example, the Association of National Advertisers twice provided comments on the New gTLD Program, on December 15, 2008 and April 12, 2009. In 2008, the ANA provided ICANN with a list of five specific proposals for ICANN's consideration within the program. All five of its proposals have been addressed in the current design: trademark protections have been strengthened; there will be greater transparency of applicant data and more consistent information available on registrants; registration fees have been studied; objection processes have been clarified and strengthened; and provisions have been made for attaching higher security requirements based upon the nature of the string (e.g., an applicant for a financially-related string should have high security capabilities). ANA's concerns raised by many businesses participating in the public comment forums.

[12] Remarks of Assistant Secretary Strickling at the Practising Law Institute's 29th Annual Telecommunications Policy & Regulation Conference, December 8, 2011, available at http://www.ntia.doc.gov/speechtestimony/2011/remarks-assistant-secretary-strickling-

practising-law-institutes-29th-annual-te.

[13] In addition to the White Paper, the introduction of New gTLDs was consistently identified as a core objective in each of ICANN's Memoranda of Understanding with the U.S. Department of Commerce (1998 – 2006) and the Joint Project Agreement, calling for ICANN to "[d]efine and implement a predictable strategy for selecting new TLDs." *See* Amendment 6 to Memorandum of Understanding Between the U.S. Department of Commerce and The Internet Corporation For Assigned Names And Numbers, *at* http://www.ntia.doc.gov/ntiahome/domainname/agreements/amendment6_09162003.htm (Sept. 16, 2003). The study and planning stages, extending back several years, include two trial rounds of top-level domain applications held in 2000 and 2003. The experience of those rounds was used to shape the current process.

[14] GNSO Final Report on the Introduction of New Top Level Domains ("Final Report"), *at* http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm (Aug. 8, 2007); ICANN Board resolution, http://www.icann.org/en/minutes/resolutions-26jun08.htm (June 26, 2008); GNSO Minutes, http://gnso.icann.org/meetings/minutes-gnso-29oct03.html (Oct. 29, 2003).

One of the foundational documents influencing the GNSO Final Report and the community's implementation work is the GAC Principles Regarding New gTLDs, at http://gac.icann.org/system/files/gTLD_principles_0.pdf (Mar. 28, 2007).

[15] The final points of discussion between the Governmental Advisory Committee and the Board are collected at http://www.icann.org/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf, beginning at page 52.

[16] The Board's Rationale regarding potential areas of difference with the Governmental Advisory Committee is available at http://www.icann.org/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf.

[17] ICANN's relationships with law enforcement are not limited to the New gTLD Program;

ICANN coordinates regularly on security-related issues and to address threats to the DNS.

[18] IRT Membership Directory, at https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/trademark_protection:20090407232008-0-9336/original/IRT-Directory.pdf.

[19] IRT Resolution, at http://www.icann.org/en/minutes/resolutions-06mar09.htm#07 (Mar. 6, 2009).

[20] Zone File Access Advisory Group information and documents are available at http://www.icann.org/en/topics/new-gtlds/zone-file-access-en.htm.

[21] SAC 048: SSAC Comment on Orphan Glue Records in the Draft Applicant Guidebook, available at http://www.icann.org/en/committees/security/sac048.pdf.

[22] Information on the work of the HSTLD Advisory Group is available at http://www.icann.org/en/topics/new-gtlds/hstld-program-en.htm.

[23] Information on the work of the JAS Working Group is available at https://community.icann.org/display/jaswg/SO-AC+New+gTLD+Applicant+Support+Working+Group+(JAS-WG).

[24] Information on the work of the Joint IDN Working Group is available at http://ccnso.icann.org/workinggroups/jiwg.htm.

[25] Documentation on the work of the group formed to address Vertical Integration policy issues is available at http://gnso.icann.org/issues/, under the heading "**Vertical Integration Between Registries and Registrars – CLOSED**".

[26] The Temporary Drafting Group was announced in April 2010 and was open to all who wished to participate. *See* http://blog.icann.org/2010/04/temporary-drafting-group-work-session-on-new-gtld-implementation-issues-%E2%80%93-to-be-held-3-may-2010/.

[27] The work of the Implementation Assistance Group is available at

https://community.icann.org/display/cctrdmrkclrnghsiag/Home.

[28] Carlton I, paragraphs 23, 39 *passim*.

[29] *Id*. at paragraph 23.

[30] *Id*.

[31] Katz/Rosston Phase II, at paragraphs 75-76.

[32] Rationale for the Board's decision that no further economic studies would be beneficial at this time is available at http://www.icann.org/en/minutes/rationale-economic-studies-21mar11-en.pdf.

[33] See, http://www.circleid.com/posts/20090202_analysis_domain_names_registered_new_gtlds/.

[34] See, http://www.mindsandmachines.com/wp-content/uploads/Analysis-of-Trademark-Registration-Data-in-New-gTLDs.pdf.

[35] See, e.g., Katz/Rosston Phase II at paras 64-65, 120.

[36] *See* Dr. Dennis Carlton, "Comments on Michael Kende's Assessment of Preliminary Reports on Competition and Pricing", at https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/tld_demand_and_economic_analysis:20091007232802-2-13939/original/carlton-re-kende-assessment-05jun09-en.pdf (June 5, 2009).

[37] Katz/Rosston Phase II, at page 52.

[38] See http://www.circleid.com/posts/20090202_analysis_domain_names_registered_new_gtlds/.

[39] While not related to mitigating malicious conduct, consumers and registrants will also be protected due to the work done on registry continuity and the creation of new transition procedures for use in the event of registry failure.

[40] As a companion protection for registry operators that maintain exclusive use over all registrations within a TLD – such as brand holder – in the event of registry failure, ICANN may not transfer registry operations without the consent of the registry operator.

[41] While rates of 215-240 new gTLDs are expected over a one-to-two year period, it has been determined that the root zone servers can readily accommodate maximum rates of 1000 delegations per year. *See* October 2010 Root Zone Scaling reports are available at http://www.icann.org/en/announcements/announcement-2-06oct10-en.htm, and the public comment fora can be accessed from there as well. *See also* Letter from Jun Murai, Chair of RSSAC, http://www.icann.org/en/correspondence/murai-to-board-25nov10-en.pdf (25 November 2010).

[42] ICANN undertook this commitment through resolution, available at http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.3.

[43] GNSO Summary of Policy Recommendations, at http://gnso.icann.org/issues/new-gtlds/summary-principles-recommendations-implementation-guidelines-22oct08.doc.pdf.

[44] Sean MacDonald, "Brands: Here's How You Can Take Advantage of ICANN's New Top-Level Domains", published in Ad Age Digitial, December 9, 2011, *available at* http://adage.com/article/digitalnext/brands-advantage-icann-s-top-level-domains/231483/.

[45] The ATRT Report is available at http://www.icann.org/en/reviews/affirmation/activities-1-en.htm.

[46] For an example of the application of the Conflict of Interest policy within the New gTLD Program deliberations, Board members and Liaisons regularly identify particular areas of interest that require the members to refrain from voting on issues, or refrain from participating in deliberations, as reported at http://www.icann.org/en/minutes/minutes-25sep10-en.htm.

[47] The IDN ccTLD Process was created after consultation and planning with the ccNSO (Country Code Names Supporting Organization) and the GAC.

[48] These IDN ccTLDs represent 20 countries and territories. Due to language difference in country, for example, India has IDN ccTLDs delegated in seven separate scripts.

[49] Information on DNSSEC deployment can be found at http://www.root-dnssec.org/.

Mr. WALDEN. All right, Mr. Pritz. Thank you very much for your testimony.

Now we are going to hear from Mr. Daniel L. Jaffe, executive vice president, National Association of Advertisers, on behalf of the Coalition for Responsible Internet Domain Oversight.

Mr. Jaffe, thank you very much for your very detailed testimony. We look forward to your comments.

Mr. JAFFE. Good morning. Thank you.

Mr. WALDEN. And be sure to turn on the microphone and pull it uncomfortably close to your mouth.

STATEMENT OF DANIEL L. JAFFE

Mr. JAFFE. Good morning. Thank you very much for having me here today. We really appreciate the opportunity to discuss what we think is one of the most important issues facing the whole of the brand community throughout the world.

My name, as you stated, is Dan Jaffe, and I am executive vice president, government relations, for the Association of National Advertisers. I am also appearing on behalf of CRIDO, the Coalition for Responsible Internet Domain Oversight.

CRIDO represents 159 major national and international companies and trade associations that have joined together to oppose the virtually unlimited rollout of ICANN's new top-level domain program. There simply is not widespread support or consensus in favor of ICANN's proposal. Law enforcement agencies, business, consumers, nonprofit groups, nongovernmental organizations, and even the founding chair of the ICANN Board all have expressed very serious reservations about this plan.

This concern cuts through a diverse and wide swath of major participants in the U.S. and the international economy: restaurants like Dunkin' Brands, Burger King, and Papa John's—and all of these are just examples, they don't cover the whole list—broadcasters, advertisers in 52 countries around the world; financial entities such as American Express and Visa; high-tech companies like Dell, HP and 3M; manufacturers such as Kraft Foods, the Kellogg Company, and Procter & Gamble and Whirlpool; retailers like Walmart, Costco, and many small businesses; automobile manufacturers such as Ford, Chrysler Group, and Toyota, and the list goes on and on and on and continues to grow every day.

There are numerous other entities who are very concerned, including 100 major trade associations representing other wide sectors of the economy and 1.5 million nonprofit organizations like the YMCA. And a diverse group of 28 public IGOs, ranging from the IMF and OECD to NATO, all believe ICANN's program is severely flawed. Many of them believe that it would impose extraordinary costs on the whole global brand community. It is flawed because it threatens severe economic harms.

ICANN's own studies demonstrate that the program will force companies and even individuals, yes, including Members of Congress, to engage in widespread defensive registrations to protect their names and reduce capital investment. Companies will have to divert major multibillions of dollars' worth of resources from job creation and product development.

The plan is flawed because consumers will be significantly harmed. Vastly increased domain names will cause consumer confusion. The cybersquatting, malware, phishing, and other cyber harms that already occur today will only increase exponentially.

It is flawed because law enforcement officials have said that this expansion will make it far more difficult to enforce cybersecurity laws. The chair of the Federal Trade Commission just last week said this plan would be a, quote, "disaster" for both consumers and businesses. The OECD also has just raised serious issues with the rollout.

ICANN has not achieved consensus among stakeholders, something it is required do under its own code of conduct. And there are many serious conflict of interest concerns. ANA, and many of the members of CRIDO and others objected throughout the ICANN process, but ICANN hasn't listened.

Recently, NTIA Administrator Strickling made several points with which we agree. Consumer trust in the Internet is vitally important. The Internet should not be controlled by any one nation or group. And a valid multistakeholder process could result in an environment that encourages creativity and innovation. However, unfortunately, that is clearly not what is happening today. ICANN's expansion dramatically increases the risk for consumer mistrust generated by cyber harms.

Some try to use scare tactics to claim that we seek to abolish ICANN or to have the U.S. Government run the Internet. That is totally false. We believe the greatest danger to ICANN is to launch headlong into this ill-conceived program without first developing the important protections that Chairman Leibowitz, the Government Advisory Committee, the OECD, and other law enforcement officials are calling for.

Members of the subcommittee, there is nothing sacred about the January 12 ICANN top-level domain rollout. Before ICANN proceeds, it should step back, conduct real and careful studies and analysis to justify the expansion. It should then, in an extremely detailed and analytical manner, explain to the Department of Commerce, the Congress, and the entire online community how this plan will benefit the public interest, both here and abroad, as is required under the Affirmation of Commitments between ICANN and the DOC.

Thank you very much.

[The prepared statement of Mr. Jaffe follows:]

Testimony of Daniel L. Jaffe
Executive Vice President, Government Relations
Association of National Advertisers (ANA)

Hearing on ICANN's Top- Level Domain Name Program

Subcommittee on Communications and Technology
House Energy and Commerce Committee

December 14, 2011

The Association of National Advertisers (ANA) appreciates the opportunity to present our serious concerns about the new generic Top-Level Domain Name (gTLD) Program that was approved last June by the Internet Corporation for Assigned Names and Numbers (ICANN).

ANA is the advertising industry's oldest trade association, founded in 1910. Our membership includes 400 companies with 10,000 brands that collectively spend over $250 billion in marketing communications and advertising. More information about our association is available at http://www.ana.net.

I am also appearing on behalf of CRIDO, the Coalition for Responsible Internet Domain Oversight. CRIDO represents 156 major national and international companies and trade associations that have joined together to oppose the roll-out of ICANN's new gTLD Program. A list of all of the members of CRIDO, which represents virtually every sector of the American economy and many important international companies, associations and federations, is attached to this statement.[1] CRIDO members carry out some 90 percent of global marketing communications spending, equivalent to $700 billion annually. While CRIDO members may follow different approaches to domain name activity, they are all united in the belief that the proposed unfettered expansion of generic Top Level Domains is both dangerous and misguided. This proposed ICANN initiative is not merely a bad policy choice but a serious threat to the legitimate interests of business and consumers on the Internet.

On November 10, 2011, ANA and the other members of CRIDO sent a Petition to Commerce Secretary John Bryson outlining our serious concerns about the new gTLD Program approved last June by ICANN despite significant objections from many global Internet stakeholder groups. The CRIDO Petition called on the Department of Commerce, and specifically the National Telecommunications and Information Administration (NTIA), "to use its best efforts to persuade ICANN to stop or postpone the opening of the gTLD application window," which is currently scheduled to begin on January 12, 2012.[2]

Other important groups have also independently spoken out against ICANN's gTLD Program, including the National Retail Federation (NRF), the Screen Actors Guild (SAG) and the

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[1] *See* Exhibit A.

[2] *See* Exhibit B.

American Federation of Television and Radio Actors (AFTRA). Their letters to the Secretary are available at http://www.ana.net/getfile/16997 (NRF), http://www.ana.net/getfile/16998 (SAG) and http://www.ana.net/getfile/17000 (AFTRA).

We commend the Subcommittee for holding this hearing on this critical issue which could impact the shape of the Internet for decades, and perhaps in perpetuity. In the past twenty years, the Internet has grown from being used by a limited number of engineering and academic elite to being relied on every day by over 2 billion people worldwide. According to a May 2011 report from the McKinsey Global Institute, nearly $8 trillion are exchanged annually through e-commerce. The former Secretary of Commerce, Gary Locke, emphasized that "[t]he Internet is becoming the central nervous system of our information economy and society."[3] We cannot emphasize enough that the Internet serves as a recognized catalyst for global economic growth. In fact, for the first 39 days of this holiday season, online spending is up 15% from a year ago.[4] With our fledgling economic recovery hanging in the balance there is far too much at stake not to ensure that ICANN's policies are fair, impartial and productive. This is in keeping with the promises that ICANN made in the Affirmation of Commitments between ICANN and the NTIA, in exchange for the considerable power to oversee the Internet that was delegated to ICANN by the U.S. government.

We believe the new gTLD Program is bad for marketers, consumers and the entire online marketplace. Consistent with the Affirmation of Commitments, ICANN has a responsibility to ensure that its actions further the public interest, promote consumer trust and the burgeoning Internet domain.[5]

We strongly believe that ICANN's new gTLD Program fails all of these standards.

This Program in aggregate has multi-billion dollar implications for all marketers, both in the commercial and the nonprofit sectors, and their brands. It would cause irreparable harm and damage to the entire online business community. It would throw the domain name universe into substantial confusion for both marketers and consumers.

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[3] Commercial Data Privacy and Innovation in the Internet Economy: a Dynamic Policy Framework, Department of Commerce (2010), Message from Secretary of Commerce Gary Locke at 1, available at: http://www.commerce.gov/sites/default/files/documents/2010/december/iptf-privacy-green-paper.pdf

[4] comScore, Inc., "U.S. Online Holiday Spending Approaches $25 Billion for the Season, Up 15 Percent vs. Year Ago," Press Release (Dec. 11, 2011) *available at: http://www.comscore.com/Press_Events/Press_Releases/2011/12/U.S._Online_Holiday_Spending_Approaches_25_Billion_for_the_Season.*

[5] See http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm. (In relevant part,

- Section 3(a) requires ICANN to "ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent";
- Section 3(c) requires ICANN to "promote . . .consumer trust . . . in the DNS marketplace" and Section 8(c) commits ICANN to operating "as a multi-stakeholder, private sector led organization with
- input from the public, for whose benefit ICANN shall in all events act.")

FTC Chairman Jon Leibowitz discussed the ICANN program last week at a hearing before the House Judiciary Subcommittee on Intellectual Property, Competition and the Internet. He stated that the unlimited gTLD roll-out could be "a disaster for businesses and consumers" and could dramatically increase problems for law enforcement. When the Chairman of one of the chief consumer protection agencies in the U.S. labels the program a potential "disaster," that should be a clear signal to everyone that this unlimited expansion should be delayed until a full examination of the program is provided by ICANN and the Department of Commerce (DOC).

In particular, it is critical that the various requirements regarding the public interest, consumer trust and public benefits contained in the Affirmation of Commitments between ICANN and the DOC that ICANN agreed to carry out in order to obtain the freedom to manage major essential functions of the Internet are being adequately fulfilled. Clearly, the Chairman of the FTC believes that there are likely to be serious dangers in this area or he would not have so strongly stated his concerns about the possibility of a disastrous threat to the Internet community from this new ICANN initiative.

ICANN has been considering this Program for several years. ANA objected to these proposals as did many other industry groups and companies. Even important governmental entities, including international law enforcement and consumer protection organizations,[6] expressed deep misgivings about ICANN's proposed gTLD Program. Unfortunately these strong objections have largely fallen on deaf ears. Chairman Leibowitz brought up his concerns regarding an accurate WHOIS database in 2006.[7] Law enforcement organizations brought many of these same concerns to ICANN's attention in 2009. Why are we to believe that ICANN, after five years of such awareness, will now fix its law enforcement problems in one short month before the application window is opened?

In last week's hearing we believe that Senator Kelly Ayotte (R-NH) encapsulated our concerns in two critical statements:

> AYOTTE: "One thing that leaps out at me is that we're talking about a January roll-out and you're negotiating things that are incredibly important when we think about protecting consumers...from fraudulent actions. The Internet...is a wonderful tool but it also has been used by predators...so when I hear negotiations are ongoing for something that's a January roll-out, that leaps out...to say, why are we rushing into this?"

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[6] In 2009, a coalition of law enforcement agencies including the Australian Federal Police; the U.S. Department of Justice; the U.S. Federal Bureau of Investigation; the New Zealand Police; the Royal Canadian Mounted Police and the United Kingdom's Serious Organized Crime Agency issued "Law Enforcement Due Diligence Recommendations for ICANN." It is our understanding from the GAC Communiqué at Dakar, dated October 27, 2011, that **none** of law enforcement's recommendations has been adopted; in fact of the 12 recommendations registrars were only able to report on their consideration of **three of the twelve law enforcement recommendations.** GAC Communiqué – Dakar attached hereto as Exhibit C.

[7] *See* http://www.ftc.gov/os/2006/06/P035302WhoisDatabases.pdf.

> AYOTTE: "...it seems to me that inherently these are very, very important issues and it doesn't make sense to me that you'd have a January 12th roll out with outstanding issues...that will impact important protections for consumers and the law enforcement community...it is very challenging for a member of law enforcement to investigate these kinds of cases, and as I hear your testimony, you're not even sure how many [domain name endings] you'll have at the end of the day when you open this up. So that's really going to be a challenge when you go from 22 to who knows -- a thousand -- and it seems to me that that in and of itself is going to be a huge challenge for law enforcement...caution should be used to make sure we do not rush into this."[8]

Certainly, without at least specific law enforcement and consumer harm commitments enacted in the Registry Agreements, ICANN should not proceed with the new gTLD program.

ICANN consistently states that it is a multi-sectoral, bottom-up policy development organization. However, the creation of a massive bureaucratic labyrinth and process does not mean that ICANN is, in fact, representing the views of the majority of the Internet community. There clearly is not "consensus" support for the ICANN gTLD proposals. We cannot let the repetitive mantra that ICANN is a "multi-sectoral organization" camouflage or mask ICANN's lack of responsiveness to the real concerns of a very broad cross-section of the business community, and a growing group of non-governmental organizations, consumer groups and other Internet users.

Key Reasons Why the ICANN Program Must Be Stopped or Delayed

For a variety of reasons, we believe it is critical that the roll-out of the new gTLD Program be delayed.

Flawed Justification: ICANN justifies the Program on grounds that it: "might" or "may" (1) spur competition, (2) relieve scarcity in domain name space and (3) support differentiated services and new products. Yet evidence is sorely lacking that the introduction of new TLDs will actually achieve any of these goals. The very reports relied upon by ICANN to buttress its gTLD proposal prove that such justifications are unsupportable.

> *Competition.* Regarding competition, in the December 2010 report commissioned by ICANN, entitled "Economic Considerations in the Expansion of Generic Top-Level Domain Names, Phase II Report: Case Studies" ("Phase II Report"),[9] the

[8] Senator Ayotte Urges Caution on Proposed Expansion of Domain Name Endings, Press Release, Dec. 8, 2011, *available at:* http://ayotte.senate.gov/?p=press_release&id=369.

[9] Michael L. Katz et al., Economic Considerations in the Expansion of Generic Top-Level Domain Names Phase II Report: Case Studies (2010) http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf. *See also*, Michael L. Katz et al., An Economic Framework for the Analysis of Expansion of Generic Top-Level Domain Names (2010), http://www.icann.org/en/topics/new-gtlds/economic-analysis-of-new-

authors of the Phase II Report clearly conclude that the introduction of new undifferentiated gTLDs is not likely to have a "significant competitive impact" in the market for registry services (Phase II Report, ¶ 12).

Scarcity. It is equally clear that scarcity is not a current problem. As the Phase II Report concludes, ". . . [T]he relief of name scarcity is unlikely to be the principal source of social benefits derived from new gTLDs" (Phase II Report, ¶ 20).

Differentiated Services and New Products. The Phase II Report notes new domain uses that are possible with TLDs, comparing such prospects to existing TLDs, *e.g.*, domains that are restricted to particular functions or applications (such as existing TLD .mobi), domains that restrict second level registration to a particular class of owners (such as existing TLDs .museum, and .aero), and domains that restrict second-level registration to presenting a certain type of content (such as current domains relating to a specific geographic area). However, in each case, the experts conclude that the benefits were little more than speculative and that many of the TLDs adopted by ICANN in the last expansion round have been practical failures (Phase II Report, ¶¶ 39, 50, 58, 59, 62).

There is no demonstrable need to increase generic Top Level Domain names on an unlimited basis, and no likely benefit that would result from such an unrestricted increase.

A wide array of 22 suffixes such as ".biz," ".info," ".jobs," ".travel" and ".museum" currently exist, not including the country codes. Most of those gTLD names are minimally used, but nonetheless actively policed by brand owners concerned about trademark dilution, cybersquatting and the online sale of pirated or counterfeited products.[10] The gains assumed by ICANN are completely unsubstantiated. In contrast, the new Program will throw the domain name universe into widespread confusion, impose major costs on marketers and cause harm to consumers. If there is no scarcity of space within the existing domain name system, the ICANN Program appears to be a solution in search of a problem. Even more seriously, the "solution" proposed by ICANN is likely to impose enormous costs on the Internet and divert productive resources at a time where these dollars could be far more effectively used for job creation and productive capital investment.

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gtlds-16jun10-en.pdf; Michael L. Katz et al., Reply to Comments on An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names (2010 [sic]) http://www.icann.org/en/topics/new-gtlds/analysis-response-economic-framework-21feb11-en.pdf; Michael L. Katz et al., Reply to Comments on Economic Considerations in the Expansion of Generic Top-Level Domain Names Phase II Report: Case Studies (2011) http://www.icann.org/en/topics/new-gtlds/analysis-response-phase-ii-report-21feb11-en.pdf.

[10] For further background on the online piracy and counterfeiting arguments, *see* Mark Monitor, Traffic Report: Online Piracy and Counterfeiting (January 2011) (The study used only 22 brands and found that for those brands online distribution of pirated digital content and e-commerce sales of counterfeit goods were rampant).

Serious Adverse Economic Impacts if the Program is Adopted

AFE Consulting, a globally-respected economic consulting firm, is carrying out an economic analysis of the ICANN gTLD program at the request of ANA. One of the principals of the firm is Robert E. Hall, who is the Robert and Carole McNeil Joint Professor of Economics at Stanford University and Senior Fellow at Stanford's Hoover Institution. Also, in 2010, he served as the President of the American Economic Association.

In a letter last week to Commerce Secretary John Bryson, Professor Hall noted that, "the proliferation of gTLDs would raise the monitoring costs of domain name owners. ICANN has acknowledged that such proliferation would raise costs but nevertheless maintains—without any quantification of either costs or user benefits—that the benefits would exceed these costs."[11] Professor Hall then emphasized that, "In fact, the benefits, as we have demonstrated above are negligible. The costs are not."

Professor Hall then concludes that ICANN's unlimited expansion would be "contrary to the interests of both consumers and businesses" and would impose serious costs on the global multi-stakeholder community that ICANN serves.[12]

These are not just our views. The studies ICANN initiated itself recognize that the Program may cause several severe economic harms. As set forth in Paragraph 63 of the Phase II Report, the costs of the Program may include the following:

> *Misappropriation of Intellectual Property.* The experts cite a key concern of misappropriation of intellectual property rights, including the "costs of domain watching, defensive registrations, litigation or other measures to end misappropriation, and costs due to misappropriation that is not blocked (*e.g.*, lost profits due to sales of counterfeit goods or brand dilution)."[13]
>
> *Defensive Registrations.* As noted, brand owners may be compelled to file defensive registrations, *i.e.*, "registrations undertaken to protect legitimate trademark or intellectual property rights from misuse, not registrations undertaken as the 'defense' of one's business against increased competition on the merits."[14] This cost alone could be in the hundreds of thousands of dollars per brand name, creating a multi-million dollar liability for major corporations and a multi-billion dollar cost to the industry.

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[11] Letter to the Honorable John Bryson from Dr. Robert E. Hall and Michael A. Flynn, dated Dec. 7, 2011 (attached hereto as Exhibit D).

[12] *Id.*

[13] Michael L. Katz et al., Economic Considerations in the Expansion of Generic Top-Level Domain Names Phase II Report: Case Studies (2010) at ¶63, http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf.

[14] *Id.*

Several Internet Domain name sellers have estimated the range of costs for gTLD applications alone. For example, in an article entitled, "Sweeping Away Confusion Regarding gTLD's," Gretchen Olive stated that, "Those applying will need a *minimum* of $800,000 to $1 million to not only submit the application, but also to defend it against objections lodged by third parties and to get through the contract process with ICANN and set up the registry technical infrastructure (emphasis added)."[15] The article further noted that, "Monitoring for infringement and submission of objections will likely run most organizations between $25,000 and $50,000 in 2012."[16]

Domain Navigation Dilution because Consumers have More Places to Look. The experts note that the "introduction of additional gTLDs may increase the costs of Internet navigation by increasing the number of potential domains over which a user may search. To the extent that such effects arise, they can dilute the value of existing domain names as navigation devices. The costs associated with such dilution include the costs of defensive registrations . . . and the costs due to dilution that cannot be mitigated."[17]

Harm to Internet Users from Increased Cybersquatting. One of the most incipient and costly challenges to the adoption of any new gTLD is the prospect of cybersquatting and the substantial costs associated with preventing and policing it, which are already well into the billions of dollars. With respect to cybersquatting, the experts note, "In addition to harm in the form of increased search costs consumers may suffer more direct harm from increased cybersquatting. This direct harm may result from malware, phishing, and the unknowing purchase of counterfeit goods."[18] While the experts opine that such a result "may" occur, history proves that cybersquatting <u>will</u> occur, just as it has with every TLD that has ever been administered by ICANN.

Reduced Investment by Intellectual Property Owners. The protection and development of intellectual property is a core value for the global economy, particularly given the world's reliance on technology. As ICANN's own experts conclude, the Program seriously undermines intellectual property rights – "There may also be indirect harms from the loss of intellectual property owners' incentives to invest in that intellectual property due to concerns that some of the benefits of that investment would be misappropriated."[19]

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[15] Gretchen Olive, Sweeping Away Confusion Regarding gTLDs, ADOTAS (Nov. 8, 2011) *available at:* http://www.adotas.com/2011/11/sweeping-away-confusion-regarding-gtlds/.

[16] *Id.*

[17] *Id.* at note 9, *supra* (Phase II Report).

[18] *Id.*

[19] *Phase II Report.*

> *Losses from Failed TLDs.* History itself discredits ICANN's position that the introduction of new TLDs will increase innovation and competition. One need only look at the dismal financial registration and track record of TLDs like .museum and .aero to prove the point. Such failures are very disruptive and costly to companies that have registered. This reality is borne out by the authors of the Phase II Report, who conclude that "[i]f a new gTLD failed and ceased operation, external costs might be imposed on the Internet community. Registrants in a failed gTLD might be stranded, unable easily to move their websites (on which they may have based their business) to other TLDs due to embedded links. More generally, Internet users might face increased clutter on the Internet if links fail to resolve."[20] Clearly, these types of dangers are likely to be substantially magnified by allowing an unrestricted proliferation and explosive growth of domains.

ICANN has in effect dismissed these concerns in reliance on what its own experts have noted as "speculative" competitive benefits of the Program. However, is it really credible that the broad group represented by the CRIDO membership - that includes some of the largest national and international advertisers, brand holders and associations in the world, with representation cutting across a vast range of industry sectors - can all be unable to foresee what are their true competitive interests?

ICANN's Deliberation Process is Flawed

Nevertheless, ICANN is now moving forward with the Program. ICANN justifies ignoring these studies in its report entitled, "Rationale for Board Decision on Economic Studies Associated with the New gTLD Program."[21] With all due respect, the "Rationale" is nothing short of a nullification of ICANN's own mandate to conduct economic studies. Rather than calling for further expert analysis, ICANN dismisses the very economic evidence derived from the studies and opts for a default justification of "competition" in which any TLDs may be adopted. Furthermore, ICANN minimizes the Phase II Report's conclusion that registry competition will not be significantly affected by the Program; ICANN says its real interest is competition in business generally, and claims that any additional economic study on that subject would be futile.[22] We understand that ICANN contemplates further studies once the new gTLD Program

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[20] *Id.*

[21] Available at www.icann.org/en/minutes/rationale-economic-studies-21mar11-en.pdf. *See also* ICANN Board Rationales for the Approval of the Launch of the New gTLD Program, *available at* www.icann.org/en/minutes/rationale-board-approval-new-gtld-program-launch-20jun11-en.pdf. Even in its final rationales, ICANN acknowledges that no determination could be made that the benefits of the new gTLD program will outweigh the costs.

[22] *See* ICANN, Minutes of Board Meeting 25 January 2011, Economic Studies - http://www.icann.org/en/minutes/minutes-25jan11-en.htm ("[T]he Board has determined that no further commissioned economic studies could better inform the Board's decision." *Id.* at 8). *See also* ICANN, Rationale for Resolution 2011.01.25.22 (2011) at 1, http://www.icann.org/en/minutes/rationale-economic-studies-21mar11-en.pdf; *see also* Anthony Van Couvering, ICANN's Economic Study – It Depends, Minds + Machines Blog (Jul 21, 2010)(Commenting on the June 2010 Katz economic study Mr. Van Couvering said, "Should observers of ICANN

is underway,[23] but at that point, the damage will have been done. Once new gTLDs are deployed, there is no turning back.

If this Program, in fact, were likely to enhance competition and the Internet marketplace, one would expect broad statements of support for it. This support would come from many Internet and governmental sources. Instead, the voices that are speaking in favor of the Program appear to come almost exclusively from registrars, registries and others who will directly profit from facilitating the gTLD roll out – not those whom ICANN says will benefit. The broader Internet business community is clearly rejecting the proposal.

This scant and conflicting economic analysis is one of many examples in which ICANN has disregarded its own requirements and unilaterally issued an edict. ICANN's own Code of Conduct[24] mandates that ICANN will "[w]ork to build consensus with other stakeholders in order to find solutions to the issues that fall within the areas of ICANN's responsibility. The ICANN model is based on a bottom-up, consensus driven approach to policy development." Its undertakings with the U.S. Department of Commerce additionally require that ICANN act rationally and transparently.[25]

Clearly, the legal and due diligence requirements of ICANN's own mandates have not been met here. An effort to foist on the world community and markets a change of this magnitude is not the measured "bottom up" approach described in the Code of Conduct. Moreover, it is impossible to describe the decision to adopt the Program as a decision based upon consensus where the research, comments and reports submitted to ICANN clearly show that there was and still is no consensus on the purported benefits of the Program.

Excessive Costs and Harms to Brands

The immediate cost imposed on businesses is likely to be in the billions of dollars. Applying for a new Top Level Domain name will require an extraordinarily expensive registration fee of

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lend any credence to this study? If your goal is to advocate a position without any empirical evidence, it is an excellent tool. If your goal is to understand what the new gTLD program will produce, it will, if printed out and bound, make a splendid paperweight").

[23] http://www.icann.org/en/minutes/minutes-25jan11-en.htm.

[24] http://www.icann.org/en/documents/code-of-conduct-10jan08-en.pdf.

[25] ICANN's Code of Conduct at http://www.icann.org/en/documents/code-of-conduct-10jan08-en.pdf; see also, Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation for Assigned Names and Numbers (September 30, 2009) at http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm ("ICANN commits to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders by: . . . (c) continually assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof); (d) continually assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and (e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development").

$185,000 as well as a minimum cost of $25,000 paid annually to ICANN over the ten-year contractual commitment that successful applicants must make. Costs will further escalate at the second level of naming – the word to the left of the "dot" – as brand owners will have to consider registering each of their brand-related terms, for either commercial or defensive purposes.

Some have estimated that, for a typical company, the cost of acquiring a single gTLD and managing it over the initial commitment of ten years could easily exceed $2 million, including expenses for the application process, operations, disputes, and related legal services. The costs associated with trademark monitoring and protection in all the new gTLD spaces will run even higher. Some CRIDO members spend over $1 million a year today to enforce against cybersquatting and fraud in the existing 22 gTLD spaces. These numbers will clearly escalate if ICANN's proposal goes forward. In addition, many companies may face an auction for a generic Topic Level Domain, which will result in higher costs to ICANN's benefit. Many companies have hundreds or even thousands of brands to defend. Brand owners will face a Hobson's choice of either being compelled to spend substantial resources to acquire and manage new gTLDs or risk the harm to their brands that could occur if they take no action. This has certainly been the message spoken loud and clear to us from our members and the many groups within CRIDO.

Following the Money

Existing and prospective Internet registries and registrars stand to be the primary beneficiaries of the new gTLD Program. Just examining ICANN's own financial statements, it would appear that registries and registrars pay fees that comprise the lion's share of ICANN's budget. According to ICANN's own audit reports for the Fiscal Year 2011, ICANN's primary source of revenue comes from Internet registries and registrars. In fact, of ICANN's $69.3 million in revenue for Fiscal Year 2011, $64.5 million came from fees paid by registries and registrars.[26] That is 93% of ICANN's 2011 revenue. In 2010, that same figure was 94%.[27] Looking ahead to this new gTLD program, more TLDs mean new business for registries and registrars and greater numbers of registries and registrars, which in turn creates more fees for ICANN.

However, ICANN's budget incentive for new gTLDs will be more than increased registry and registrar fees. The initial application fees expected in FY 2012 and 2013 will provide the organization with a considerable boost to its budget – a $92.5 million boost - which in fact is likely to be a quite conservative figure because it only projects 500 applications. However, at last week's hearing held by the Senate Commerce Committee, ICANN's representative suggested that the new gTLDs that will be allowed in the first year alone could be as high as 1,000 or more applications.[28] In the Fiscal Year 2012 budget projections for new gTLD

[26] *See* Report of Independent Auditors and Financial Statements for the Internet Corporation for Assigned Names and Numbers, prepared by Moss-Adams LLP June 30, 2011 and 2010, *available at:* http://www.icann.org/en/financials/financial-report-fye-30jun11-en.pdf.

[27] *Id* at 2.

[28] New gTLD Program Cash Flow and P&L by Fiscal Year, ICANN.org, (September 9, 2011) (showing the gTLD financial projections) *available at*: http://www.icann.org/en/financials/new-gtld-program-cash-flow-09sep11-en.pdf

revenues are expected to add another $27.8 million to ICANN's revenue – or adding another 40% to its budget.[29] Likewise, in draft Fiscal Year 2013 new gTLD revenues are expected to add another $64.8 million – that is nearly a 94% increase in revenues above the 2011 fiscal year figures mentioned above.[30]

ICANN says that it will use these revenues for intensive application review processes, but we would be remiss if we did not add that $30 million or nearly one-third of all expected gTLD application revenues will be earmarked for a litigation risk fund. ICANN is clearly expecting many problems with this application window given the large litigation budget anticipated.[31]

Lack of Consensus

It is true that ICANN spent a number of years considering this Program at meetings around the world. However, the 156 members of CRIDO, representing major global companies and business groups, are living proof that the objections of industry sectors most affected by this Program have not been adequately considered or addressed by ICANN. A number of CRIDO members have actively voiced objections to the new gTLD process and the lack of adequate trademark protection mechanisms, yet this entire constituency – the one required to fund the new names and maintain the Internet's economic model – has been largely ignored. On the other hand, we do not hear any clamor for the Program. ICANN has failed to reach stakeholder consensus, a specific requirement of its contract with the NTIA.

The lack of consensus is demonstrated by a report from ICANN's own Implementation Recommendation Team (IRT), a group of 18 experts in trademark protection on the Internet. In a statement presented to ICANN and the public at large, the IRT noted that, "A sizeable number of our team would have preferred status quo with no new gTLDs until better Rights Protection Mechanisms are in place for the existing gTLDs."[32] In addition, the IRT emphasized that others in the IRT group favored only "the measured introduction of community based gTLDs."[33] The

("gTLD Cash Flows Projections"); Delegation Rate Scenarios for New gTLDs, ICANN.org, (Oct. 2010) at p 6 (showing 1000 applications as extremely high activity and 1000's of applications as the maximum throughput) *available at:* http://www.icann.org/en/topics/new-gtlds/delegation-rate-scenarios-new-gtlds-06oct10-en.pdf. *See* Senate Commerce Committee "ICANN's Expansion of Top Level Domains" Archived Webcast (Dec. 8, 2011) *available at:* http://commerce.senate.gov/public/index.cfm?p=Hearings&ContentRecord_id=22f4a71e-93e9-4711-acec-3ed7f52277cc&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group_id=b06c39af-e033-4cba-9221-de668ca1978a&MonthDisplay=12&YearDisplay=2011.

[29] *gTLD Cash Flow Projections* at 2.

[30] *Id.*

[31] *Id.*

[32] *See* Final Draft Report of the Implementation Recommendation Team as submitted to ICANN Board and posted for public comment on May 29, 2009, *available at:* www.icann.org/en/topics/new-gtlds/irt-final-report-trademarkprotection-29may09-en.pdf ("IRT Report").

[33] *Id.*

report noted that the team was frequently reminded of the scale of abusive behavior in the current domain name system: "It emerged that each one of the five brand owners on the IRT expects to face at least one new domain name infringement somewhere in the world every day of the year."[34] What is clear is that despite ICANN's reference to this group's efforts, the IRT's views do not represent a "consensus" in favor of the proposed unlimited expansion of gTLDs and actually suggest that many of the members believed that such a step would be, at the very least, premature or even misguided.

Conflict of Interest Concerns

We are very concerned about potential conflicts of interest that may be present in this expansion proposal, for both the Board and staff of ICANN. It is very troubling that many of the same individuals who approved this expansion, including ICANN's former Chairman, now stand to benefit substantially from companies that will register applicants and manage the expansion. For example, within one month after the vote of the ICANN Board to approve the new gTLD expansion, former ICANN Chairman Peter Dengate Thrush had joined a London company called Top Level Domain Holdings, a company that will directly profit from the decision.

These events have cast a serious cloud over the legitimacy of the vote to approve the new gTLD Program. ICANN serves as a quasi-governing body for the day-to-day operations of the Internet. It is absolutely critical that all decisions are made in the public interest, not in the best interest of the closely-knit ICANN family.

We believe that ICANN can reclaim its legitimacy as an Internet governance body only by conducting a thorough and proactive review of both the gTLD expansion and the broader conflict of interest and ethics policies for the organization. We expressed these concerns in a letter to ICANN on October 2, 2011, which is available at http://www.ana.net/getfile/16766. Our letter notes that serious concerns about the inadequacy of the ICANN conflict of interest policies have been expressed by Senator Ron Wyden (D-OR), by Lawrence Strickling, Assistant Secretary for Communications and Information at the U.S. Department of Commerce, and by the full European Commission.

At its October meeting in Dakar, ICANN's Governmental Advisory Committee (GAC) expressed "extreme concern about the inadequacy of the existing rules of ethics and conflict of interest" in ICANN.[35] The conflict of interest issues threaten to undermine confidence in ICANN's decision-making. Obviously, if ICANN merely adopts prospective conflict of interest corrections they will not undo harms that have already occurred. Attention must be paid to the effects of conflicts on ICANN's deliberations and the legitimacy of the gTLD roll out proposal.

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[34] *Id.* at page 2.

[35] *See* note 6, GAC Communiqué, *supra*.

Exemptions to the Program

Three groups were exempted or exempted themselves from the new gTLD Program: the Red Cross, the Olympics and ICANN itself. In letters to ICANN, both the Red Cross and the Olympics stated that they needed this type of protection to assure that the public who trust their brand identities would not fall victim to typosquatting, cybersquatting and phishing. The Red Cross noted that a substantial portion of their resources are used to counteract "fraudulent websites containing Red Cross names to solicit donations routinely after virtually every newsworthy disaster."[36]

While these exemptions may be appropriate, no other exemptions were extended to the thousands of other charities and foundations that similarly use the Internet to foster their public interest activities – yet they surely face the same kinds of harms.

The fact that ICANN exempted itself is even more informative. ICANN not only exempted its own name from the gTLD process, but several other names as well. But the protections for ICANN will not end at the top level. ICANN will have the opportunity to negotiate more protections for itself at the second level once new gTLD registries are selected. Take for example, the many reservations that ICANN made for itself on the new .xxx domain. In the .xxx registry, ICANN was even able to protect names of some of its leadership.[37] No other groups received the same protection. Major universities across the country, for example, have recently found it necessary to purchase multiple .xxx domain names to protect against links of their names to porn sites. The Ohio State University purchased a total of 19 domains, including buckeyeblitz.xxx and goldpants.xxx.[38] Texas A&M purchased 15 secondary domains, including the name of their mascot "Reveille" at a "cost of $3,000 to $5,000." Gary Suswein, a spokesman at the University of Texas at Austin, explained why colleges and universities are taking these actions: "The way we view this is an insurance policy. It costs us something upfront but we avoid the problem of having our reputation…tarnished by websites we can't control or don't support."[39]

In addition, the Council of Better Business Bureaus (CBBB) has been told that it cannot even protect BBB, one of the most recognized trademarks in North America because the ICM

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[36] David Meltzer, Senior Vice President International Services, Peggy Dyer, Chief Marketing Officer and Mary S. Elcano, General Counsel and Corporate Secretary, American Red Cross, to Kurt Pritz, Senior Vice President, Stakeholder Relations and Amy Stathos, Deputy General Counsel, ICANN, June 16, 2011, page 2.

[37] Kevin Murphy, RodBeckstrom.xxx Will Never See the Light of Day, Domain Incite (Sept. 14, 2011) *available at:* http://domainincite.com/rodbeckstrom-xxx-will-never-see-the-light-of-day/.

[38] FoxNews.com, Penn State Bought Adult .XXX Domain Names to Block Usage Prior to Sex Abuse Scandal (Nov. 30, 2011) *available at* http://www.foxnews.com/us/2011/11/30/penn-state-buys-adult-domain-names-to-block-usage/.

[39] Associated Press, Colleges Buying .XXX Sites to Head Off Porn, Chron.com (Dec. 11, 2011) *available at:* http://www.chron.com/news/article/Texas-colleges-buying-xxx-sites-to-head-off-porn-2395705.php.

Registry that oversees the .xxx Top Level Domain had reserved "bbb.xxx as a premium name that it can later auction off to the highest bidder." [40]

The problems the CBBB faces are hardly isolated. Angela F. Williams, general counsel of the YMCA, testified last week on behalf of that organization and a consortium of other similar organizations which comprise the Not-for-Profit Operational Concerns Constituency (NPOC) before the Senate Commerce Committee. Ms. Williams emphasized that the 1.5 million not-for-profit entities in this country are likely to be severely impacted by the virtually unlimited expansion of gTLDs, as this initiative is likely to increase "public confusion and fraud" and that "this will greatly increase the likelihood that the public will be misled in a manner that is both financially devastating and dangerous to the reputation of those organizations – making it difficult for them to achieve their worthy mission."[41]

These exemptions explode the argument that ICANN makes that it has developed adequate protections against cybersquatting, typosquatting and phishing. These charitable and other NGO groups will face the same dangers that the Red Cross and the Olympics highlighted, and many of them will not have the financial wherewithal to defend and protect their good name in the Internet marketplace.

Not All TLDs Are Alike

Our concerns primarily focus on generic Top Level Domains (gTLDs). These concerns do not generally extend to so-called ccTLDs dealing with country designators such as .co, .cn, .eu, and .de. Nor are we opposed to the use of other languages and character sets in the Domain system, although we believe that the public interest requires that all Top Level Domains be cost beneficial and not impose undue burdens on the Internet or undermine consumer trust. Neither do we believe that there is something sacrosanct about maintaining the existing 22 gTLD system unaltered. However, all of our companies, associations and groups believe the unrestricted and unlimited expansion of gTLDs is a reckless experiment that needs to be halted and reassessed before it damages the very positive growth of consumer trust that is fundamental to the Internet marketplace.

The Department of Commerce and ICANN

In a speech on December 8 before the Practicing Law Institute, NTIA Administrator Larry Strickling addressed the growing concerns about ICANN's proposal.[42] Administrator Strickling

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[40] *See* Exhibit E.

[41] *See* Testimony of Angela F. Williams before the Senate Commerce, Science and Transportation Committee (Dec. 8, 2011), *available at* http://commerce.senate.gov/public/?a=Files.Serve&File_id=56a49ede-865f-4bbe-9635-58d0b59add7b.

[42] *See* Remarks of Assistant Secretary Strickling at the Practicing Law Institute's 29th Annual Telecommunications Policy & Regulation Conference, dated, Dec. 8, 2011 *available at:*

made several points with which we agree: consumer trust in the Internet is of paramount importance. It is in the best interest of all that the Internet not be controlled by any one nation or group. In addition, a multi-stakeholder process that achieves consensus will ensure that stakeholders are both involved in the discussions and, hopefully, result in an environment that encourages creativity and innovation. Unfortunately, we do not believe that these goals have been fostered by ICANN's gTLD roll-out program.

As noted above, ICANN's expansion proposal raises dramatically increased risks for cyberharm. Instances of cybersquatting, malware, phishing and other dangerous Internet activities that occur today will only increase exponentially with the expansion in domain names that ICANN proposes. These growing threats will lead to consumers placing less – rather than more – trust in the Internet, as they fear their online activities may be subject to harmful or predatory practices.

Furthermore, we do not advocate that the U.S. Government – or any government, for that matter – control the Internet. We also do not seek the abolition of ICANN. Rather, we are concerned that the severe harms that could result from this proposal (if implemented in its current form) could drastically undermine the foundations of ICANN and its supervisory role over Top Level Domains.

As noted previously, the stakeholder process conducted by ICANN clearly has not achieved consensus. The concerns expressed by CRIDO's members alone – representing an extraordinary cross section of the varied and numerous sectors of our economy – show that there is no agreement about the need for, or method of, proceeding with the expansion at this time. Numerous non-profit organizations and law enforcement agencies are also expressing their deep concerns.

When so many business sectors forcefully express their view that the expansion will be severely harmful, it is difficult to imagine that the expansion will create the flexible and innovative environment needed to produce jobs and spur product development. Instead, if companies' need to engage in widespread defensive measures and have to incur major other costs to protect their brands, then this is almost certain to divert key resources from the productive and constructive efforts so needed in today's challenging economic environment.

Conclusion

We commend the Subcommittee for holding this important hearing. Given the serious concerns expressed by the extraordinarily broad and growing cross-section of the entire American and global business community, the companies which provide the economic foundation of the Internet, and the potential dangers to consumers, we believe it would be totally irresponsible and reckless for ICANN to proceed full-speed ahead with the roll-out next month.

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http://www.ntia.doc.gov/speechtestimony/2011/remarks-assistant-secretary-strickling-practising-law-institutes-29th-annual-te.

We very much appreciate this opportunity to testify and for your careful consideration of our and the other members of CRIDO's views.

Exhibit A

Association Signatories to the ICANN Petition

AAF-Amarillo
AAF-Dallas
AAF-Fort Worth
AAF Hampton Roads
AdClub Cincinnati
Advertisers Association of Guatemala (Guatemala)
Advertisers Association of Nigeria (Nigeria)
Advertisers Association of Turkey (Turkey)
Advertisers Business Group (United Arab Emirates)
Agrupacion Nacional de Anunciantes de Mexico (Mexico)
American Advertising Federation (AAF)
American Advertising Federation Baltimore, Inc.
American Advertising Federation of Des Moines
American Apparel & Footwear Association (AAFA)
American Association of Advertising Agencies (4As)
American Beverage Association (ABA)
American Council of Life Insurers (ACLI)
American Health Care Association (AHCA)
American Insurance Association (AIA)
American Intellectual Property Law Association (AIPLA)
American Society of Association Executives (ASAE)
Asociacion Espanola de Anunciantes (Spain)
Asociacion Nacional de Anunciantes de Colombia (Colombia)
Asociacion Nacional de Anunciantes Peru (Peru)
Asociacion Nacional de Anunciantes Venezuela (Venezuela)
Asociacian Nacional de Avisadores Chile (Chile)
Associacao Brasileira de Anunciantes (Brazil)
Associacao Portuguesa de Anunciantes (Portugal)
Association of Advertisers in Ireland (Ireland)
Association of Canadian Advertisers (Canada)
Association of National Advertisers (ANA)
Association of New Zealand Advertisers (New Zealand)
Association of Swiss Advertisers (Switzerland)
Austin Advertising Federation
Australian Association of National Advertisers (Australia)
Boise Advertising Federation
Bond van Adverteerders (The Netherlands)
Bulgarian Association of Advertisers (Bulgaria)
Cable Advertising Bureau (CAB)
Camara Argentina de Anunciantes (Argentina)
Camara de Anunciantes del Paraguay (Paraguay)
Camara de Anunciantes de Uruguay (Uruguay)
China Association of National Advertisers (China)

Consumer Electronics Association (CEA)
Czech Association for Branded Products (Czech Republic)
Cyprus Advertisers Association (Cyprus)
Dansk Annoncoerforening (Denmark)
Direct Marketing Association (DMA)
European Association of Communications Agencies (EACA)
European Publishers Council (EPC)
Food Marketing Institute (FMI)
Grocery Manufacturers Association (GMA)
Groupement des Annonceurs du Maroc (Morocco)
Hellenic Advertisers Association (Greece)
Hungarian Branded Goods Association (Hungary)
Idaho Advertising Federation
Idaho Falls Advertising Federation
Incorporated Society of British Advertisers (United Kingdom)
Indian Society of Advertisers (India)
Indonesia Advertisers Association (Indonesia)
Intellectual Property Owners Association (IPO)
Interactive Advertising Bureau (IAB)
IAB Europe
The Israel Marketing Association (Israel)
Japan Advertisers Association (Japan)
Lebanese Association of Advertisers (Lebanon)
Lewis-Clark Valley Advertising Federation
Magic Valley Advertising Federation
Mainostajien Liitto (Finland)
Malaysian Advertisers Association (Malaysia)
The Marketing Association of South Africa (South Africa)
Mobile Marketing Association (MMA)
MPA - the Association of Magazine Media
National Association of Broadcasters (NAB)
National Association of Manufacturers (NAM)
National Confectioners Association
National Council of Chain Restaurants (NCCR)
National Restaurant Association (NRA)
Norwegian Association of Advertisers (Norway)
Organisation Werbungtreibende im Markenverband (Germany)
Pakistan Advertisers Society (Pakistan)
Philippine Association of National Advertisers (The Philippines)
Pocatello Advertising Federation
Promotion Marketing Association (PMA)
Property Casualty Insurers Association of America
Radio Advertising Bureau (RAB)
Retail Industry Leaders Association (RILA)
Russian Association of Advertisers (Russia)
Singapore Advertisers Association (Singapore)

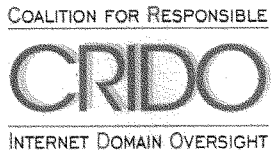
Slovak Association for Branded Products (Slovakia)
Slovenian Advertising Chamber (Slovenia)
Sveriges Annonsorer (Sweden)
Television Bureau of Advertising (TVB)
Union Belge des Annonceurs (Belgium)
Union des Annonceurs (France)
U.S. Chamber of Commerce
Utenti Pubblicita Associati (Italy)
World Federation of Advertisers (WFA)

Company Signatories to the ICANN Petition

Acxiom
adidas
Adobe Systems Incorporated
Allstate Insurance Company
American Express
Autodesk, Inc.
Brinker International
Burger King Corporation
The Coca-Cola Company
Chrysler Group LLC
Church's Chicken
Combe Incorporated
ConAgra Foods
Costco Wholesale Corporation
Darden Restaurants, Inc.
Dell Inc.
Denny's Corporation
Dunkin' Brands, Inc.
Educational Testing Service (ETS)
Fidelity Investments
Ford Motor Company
General Electric Company
GroupM
Hack Creative
Havas
Hewlett-Packard Company
Hunter Douglas NA
J.C. Penney Company, Inc.
The J.M. Smucker Company
Johnson & Johnson
Kellogg Company
Kraft Foods
La Quinta
Liberty Mutual

MillerCoors
Money Mailer of Amarillo
Nationwide Mutual Insurance Company
Neon Sun Tanning Salon
Nestle USA
ORCI
OSI Restaurant Partners, LLC
Papa John's
Procter & Gamble
Publicis Groupe
Pulte Group
Reebok
Rollins, Inc.
Samsung
Siemens AG
Siemens Corporation
The Toro Company
Toyota
US Bank
Vanguard
Verge
Visa, Inc.
Walmart
Xerox Corporation

Exhibit B



November 10, 2011

The Honorable John Bryson
Secretary
US Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Secretary Bryson:

We, the undersigned, representing large and small business, in virtually every industry sector, in the United States and around the world, are writing to express our strong concern with respect to the June 2011 decision by the Internet Corporation for Assigned Names and Numbers (ICANN) to approve the top-level domain (gTLD) Applicant Guidebook and to move forward with plans to open the new gTLD application window on January 12, 2012 (the ICANN plan, decision or ICANN Proposal) on a virtually unlimited basis.

ICANN's action was taken despite widespread and significant objections raised throughout the process by many in the global community of Internet users. ICANN's decision was not made in the public interest, does not promote consumer trust, and does not benefit the public, as required in the Affirmation of Commitments between ICANN and the National Telecommunications and Information Administration (NTIA).

Moreover, additional facts have come to light since ICANN announced the most recent iteration of the Applicant Guidebook – including rounds of troubling conflict of interest questions - which cast a shadow over the entire process leading up to ICANN's decision. Those facts, combined with the current state of the global economy, raise substantial issues regarding the wisdom of moving forward with ICANN's plan, given its undisputed costs and its merely putative benefits.

The ICANN Proposal would unduly burden a diverse range of public and private brand holders, as they would be forced to spend ever-greater amounts of time and resources simply to protect their brands. In addition, there is an unacceptably high risk that the ICANN plan would confuse consumers, increase the already unacceptable level of fraud and identity theft on the Internet, create new opportunities for Internet crime, and jeopardize cyber security. Businesses and not-for-profits alike have repeatedly raised these issues with ICANN over the last four years, with no acceptable resolution.

For these reasons, we respectfully call on the Department of Commerce and, specifically the NTIA, to persuade ICANN to postpone the opening of the top-level domain application window unless or until such time as ICANN convincingly demonstrates that unlimited TLD name expansion would:

- Promote consumer trust;
- Enhance Internet security;
- Promote widespread economic benefits across diverse economic sectors and stakeholders; and
- Demonstrate that these benefits will exceed the costs that such gTLD expansion would inevitably impose on the global Internet community.

Respectfully submitted,

Organizations

AdClub Cincinnati
American Advertising Federation (AAF)
AAF-Amarillo
AAF-Dallas
AAF-Fort Worth
AAF Hampton Roads
American Advertising Federation Baltimore, Inc.
American Advertising Federation of Des Moines
American Apparel & Footwear Association (AAFA)
American Association of Advertising Agencies (4As)
American Beverage Association (ABA)
American Council of Life Insurers (ACLI)
American Health Care Association (AHCA)
American Insurance Association (AIA)
American Intellectual Property Law Association (AIPLA)
American Society of Association Executives (ASAE)
Association of Canadian Advertisers (ACA)
Association of National Advertisers (ANA)
Austin Advertising Federation
Boise Advertising Federation
Cable Advertising Bureau (CAB)
Consumer Electronics Association (CEA)
Direct Marketing Association (DMA)
European Association of Communications Agencies (EACA)
European Publishers Council (EPC)
Food Marketing Institute (FMI)
Grocery Manufacturers Association (GMA)
Idaho Advertising Federation
Idaho Falls Advertising Federation
Intellectual Property Owners Association (IPO)
Interactive Advertising Bureau (IAB)

IAB Europe
Lewis-Clark Valley Advertising Federation
Magic Valley Advertising Federation
Mobile Marketing Association (MMA)
MPA - the Association of Magazine Media
National Association of Broadcasters (NAB)
National Association of Manufacturers (NAM)
National Confectioners Association
National Council of Chain Restaurants (NCCR)
National Restaurant Association (NRA)
Pocatello Advertising Federation
Promotion Marketing Association (PMA)
Radio Advertising Bureau (RAB)
Retail Industry Leaders Association (RILA)
Television Bureau of Advertising (TVB)
U.S. Chamber of Commerce
World Federation of Advertisers (WFA)

Corporations
Acxiom
Adobe Systems Incorporated
Allstate Insurance Company
American Express
Brinker International
Burger King Corporation
The Coca-Cola Company
Combe Incorporated
ConAgra Foods
Costco Wholesale Corporation
Darden Restaurants, Inc.
Dell Inc.
Dunkin' Brands, Inc.
Educational Testing Service (ETS)
Fidelity Investments
Ford Motor Company
General Electric Company
Hack Creative
Hewlett-Packard Company
Hunter Douglas NA
J.C. Penney Company, Inc.
Johnson & Johnson

Kellogg Company
La Quinta
Liberty Mutual
MillerCoors
Money Mailer of Amarillo
Nationwide Mutual Insurance Company
Neon Sun Tanning Salon
Nestle USA
ORCI
OSI Restaurant Partners, LLC
Papa John's
Procter & Gamble
Publicis Groupe
Pulte Group
Samsung
US Bank
Vanguard
Verge

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ICANN

Governmental Advisory Committee

Dakar, 27 October 2011

GAC Communiqué – Dakar

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Dakar, Senegal during the week of October 22-27, 2011. Forty-nine Governments participated in the meeting: 46 present and 3 by remote participation and six Observers. The GAC expresses warm thanks to the local hosts, The Ministry of Communication, Telecommunications and Information Technology (MICOMTELTIC) and the Regulatory Authority for Telecommunications and Post (ARTP) for their hospitality in organizing the meeting and ICANN for supporting the GAC during the meeting.

II. New gTLDs

The GAC further discussed and decided on the formulation of GAC advice for inclusion in Module 3 of the Applicant Guidebook [Annex I].

During the discussion ICANN Staff underlined their understanding that advice regarding the definition of Geographic Names should be adopted by the GAC.

The GAC congratulates the JAS working group on the final report and recommendations, which are consistent with GAC advice. The GAC looks forward to the Board providing clear timelines for implementation of the recommendations to enable needy applicants to join in full and meaningfully in the first round.

The GAC raised concern about the unpredictability of the actual number of applications that governments would have to digest to proceed after the end of the application period. The GAC made clear, that if the number of applications published by ICANN significantly exceeds 500, GAC members might not be able to process a very large number of applications in the very short early warning procedure and in the limited time for issuing GAC advice on all these strings.

Further, the GAC asked ICANN for clarification about its intention to process these applications in batches of 500, in the case that there are more than 500 applications. The GAC urges ICANN to clarify the procedures and implications for applicants being processed in different batches, as this might have implications for competition and applicants' business models.

Following presentations by the ICANN staff and the Security and Stability Advisory Committee, the GAC took note of the SSAC consideration of the combined impact of new gTLDs and other changes such as the introduction of IPv6, DNSSEC and IDNs to the root. The GAC welcomes the confirmation of the commitment by the ICANN Board to provide a full report with a complete analysis, including all underlying data, of the root system scalability well before the opening of the new gTLDs application round. The GAC further welcomes the confirmation of the commitment by the Board to evaluate the impact on the system after the 1st round, with the understanding that the launch of a second round is contingent on the outcome of this evaluation, in particular the absence of negative effects on the root system. The GAC believes that in order for this evaluation to be effective, an appropriate and trustable monitoring system needs to be in place.

In its discussions with the Board regarding the Communication Plan for new gTLDs, the GAC emphasised the importance of promoting the gTLDs application round in all countries, including developing countries. The GAC suggested that levels of awareness be continually assessed and reviewed, and priorities and target areas under the Plan be adjusted accordingly in the run up to the launch of the round.

The GAC welcomed the assurances received from the Board and staff that the evaluation of applications will ensure a level playing field for applicants and that any conflicts of interest will be identified and avoided accordingly.

III. Law Enforcement (LEA) Recommendations

In recent years, the Internet has grown to have over two billion users and be a significant contributor to the global economy.

Cyber-crime is a growing threat to the security and stability of the Internet, with broad and direct public policy impacts. Recent estimates suggest that the direct financial impact of cyber crime is extremely significant.

Law enforcement agencies have identified a series of specific problems which are limiting their ability to address this growing problem.

As part of this, law enforcement agencies have identified specific areas of concern in the ICANN context, relating to contractual weaknesses and a lack of necessary due diligence.

To address these urgent problems, in 2009 law enforcement agencies made 12 concrete recommendations to reduce the risk of criminal abuse of the domain name system.

These recommendations were informally socialized with the registrar community, the GAC, and with ICANN compliance staff over the course of several months, before the GAC advised the Board in its Brussels communiqué that it formally endorsed the recommendations.

Direct exchanges between law enforcement agencies and registrars continued in September 2010 in Washington D.C., in February 2011 in Brussels, and during the March and June 2011 ICANN meetings.

As a complement to the June exchanges in Singapore, the GAC urged the Board to support actions necessary to implement those recommendations as a matter of urgency.

To date, none of the recommendations have been implemented, and the risks remain. The GAC therefore advises the ICANN Board to take the necessary steps to ensure that ICANN's multistakeholder process effectively addresses these GAC-endorsed proposals as a matter of extreme urgency.

IV. Accountability and Transparency Review Team Recommendations (ATRT)

The GAC welcomes the update provided by ICANN staff on the ATRT Recommendations progress and the suggestions presented with regards to the implementation of recommendations 9 through 14 on the GAC role, effectiveness and interaction with the Board.

The GAC looks forward to an expedited implementation of the Joint Working Group and ATRT recommendations and is keen to continue working with the Board on the Recommendations related to the GAC.

V. Conflict of interest

The GAC expresses extreme concern about the inadequacy of the existing rules of ethics and conflict of interest in the light of recent events and therefore welcomes the approval of the motion by the Board Governance Committee on 15 September 2011 concerning "ethics and conflicts of interest". The GAC looks forward to the publication of a timeline with clear and effective actions as a conclusion of the Dakar meeting or shortly thereafter. In order to ensure the legitimacy and sustainability of the multi-stakeholder model as enshrined in ICANN, the GAC underlines the extreme urgency of putting in place effective and enforceable rules on conflicts of interest.

The GAC will keep this important issue under review and may come forward with further advice before the Costa Rica GAC meetings.

VI. Meeting with the Generic Names Supporting Organisation (GNSO)

The GAC and the GNSO exchanged views on a number of issues, beginning with an overview by ICANN staff of the GNSO policy development process. Consistent with the recommendations of the Accountability and Transparency Review Team and the related GAC-Board Joint Working Group, the GAC stressed its interest in ensuring that GAC views are provided and taken into account at early stages in the policy development process.

The meeting also discussed the implementation of the Law Enforcement Agency (LEA) recommendations to mitigate Domain Name System abuse, which were endorsed by the GAC in June 2010. The GAC expressed its disappointment that registrars were only able to report on their consideration of three of the twelve LEA Recommendations. Further, the reported progress fell substantially short of what GAC members believed had been achieved during its meetings with registrars in Singapore in June 2011. The GAC also expressed concern that there was no clarity on how the other nine recommendations were being progressed, despite the registrars' agreement at the Singapore meeting to provide regular status

reports. The GAC informed the GNSO Council of its intention to request the ICANN Board to take prompt and concrete action to implement the GAC/LEA recommendations.

The meeting also addressed the GAC's proposal to the GNSO on the protection mechanism for the International Olympic Committee and Red Cross/Red Crescent names at the top and second levels. The GAC requested feedback from the GNSO on the proposal as a first step in collaborating on advice for the ICANN Board in this regard, consistent with the ICANN Board Resolution in Singapore.

The GAC looks forward to further engagement with the GNSO to work more effectively within the ICANN processes and reinforce the sustainability of the multi-stakeholder model.

VII. Meeting with the At-Large Advisory Group (ALAC)

The GAC met with the ALAC to discuss Conflict of Interest issues within the ICANN Board and staff. The GAC agrees that this is a critical matter that needs to be addressed as a high priority within the community.

The GAC and ALAC also discussed the Joint Applicant Support (JAS) Working Group as well as the ALAC and GAC Joint Statement. The GAC expects a decision to be taken for implementation in time for the opening of the first new gTLD round.

In light of the common interest of advancing improvements in the ICANN model, the GAC and ALAC also discussed the ongoing work of the Accountability and Transparency Review Team (ATRT). The GAC shared the areas identified as a priority in the framework of the ATRT and the Joint Working Group recommendations, looking forward to an expedited implementation.

VIII. GAC Operating Principles

The GAC amended Principle 47 of its Operating Principles clarifying its understanding of consensus. The definition now introduced derives from United Nations practice and understands consensus as adopting decisions by general agreement in the absence of formal objections. The GAC noted that according to UN practice individual members may make reservations, declarations, statements of interpretation and/or statements of position regarding a consensus decision, provided such texts do not represent an objection to the consensus [Annex II].

IX. Joint session with the Country Code Names Supporting Organization (ccNSO)

The GAC met with the ccNSO to discuss the progress and ongoing work of the Framework of Interpretation cross-community Working Group (FoI) on delegation and redelegation, and the mechanisms for the GAC to provide feedback and contribute to this work within a timeline that the ccNSO has provided. In addition, the ccNSO shared an update of its current work areas and its organisational structure.

The GAC is eager to further engage with the ccNSO to provide timely inputs on the different stages of the FoI work.

X. Meeting with the Security and Stability Advisory Committee (SSAC)

The GAC thanks the SSAC for providing an update on its work including blocking and reputation systems, WHOIS matters and single label domain names. Further, the GAC thanks the SSAC Chair for discussions on Root Zone Scaling and Resource Public Key Infrastructure (RPKI).

The GAC looks forward to receiving further updates on DNS blocking matters and other relevant security and stability related matters.

XI. Meeting with the Nominating Committee (NomCom)

The GAC met with the Nominating Committee and discussed the skill-sets needed of an ICANN Director, as outlined in the Accountability and Transparency Review Team (ATRT) recommendations to improve the selection process. The NomCom invited individual GAC members to provide further inputs.

XII. Election of Vice-chairs

The GAC has reelected the current vice-chairs, Choon-Sai Lim (Singapore), Maria Häll (Sweden) and Alice Munyua (Kenya) to continue their mandate for another year.

***

The GAC warmly thanks all those among the ICANN community who have contributed to the dialogue with the GAC in Dakar.

The GAC will meet during the period of the 43rd ICANN meeting in San José, Costa Rica.

Annex I

Applicant Guidebook Module 3.1: GAC Advice on New gTLDs

ICANN's Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on new gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

GAC Advice may take one of the following forms:

I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.

II. The GAC advises ICANN that there are concerns about a particular application "dot-example". The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.

III. The GAC advises ICANN that a particular application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing one or more government's approval) that is implemented by the applicant.

Annex II

Operating Principles Article XII Principle 47

The GAC works on the basis of seeking consensus among its membership. Consistent with United Nations practice[1], consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection. Where consensus is not possible, the Chair shall convey the full range of views expressed by members to the ICANN Board.

[Foot note to UN practice be inserted]

[1] Statements by GAC members related to such advice will be posted on the GAC website.

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December 7, 2011

The Honorable John Bryson
Secretary
US Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Secretary Bryson:

AFE Consulting, at the request of the Association of National Advertisers (ANA), is carrying out an economic analysis of ICANN's announced intention to allow and encourage a virtually unlimited expansion of the Domain Name System (DNS) by adding many hundreds of new generic Top Level Domains (gTLDs) to the 22 already in existence and to continue to expand the number of gTLDs by the thousands in later years. The authors of this letter are professional economists leading the AFE study. We have reached the conclusion that this dramatic alteration in the landscape of the Internet would be contrary to the interests of both consumers and businesses. Our brief biographies are attached at the end of this letter.

ICANN's authority to consider the possible expansion of the number of gTLDs dates back to the November 25, 1998 Joint Memorandum of Understanding between the U.S. Department of Commerce and ICANN. We believe it is critical to keep in mind this foundational document, which, among other provisions, requires ICANN to:

> Collaborate on the design, development and testing of a plan for creating a process that will consider the possible expansion of the number of gTLDs. The designed process should consider and take into account...potential consumer benefits/costs associated with establishing a competitive environment for gTLD registries.[1]

[1] *Memorandum of Understanding Between the U.S. Department of Commerce and Internet Corporation for Assigned Names and Numbers*, November 25, 1998.

In December 2008, as ICANN proceeded with its plans for the introduction of new gTLDs, the U.S. Department of Commerce wrote to ICANN's Chairman Peter Dengate Thrush:

> [I]t is unclear that the threshold question of whether the potential consumer benefits outweigh the potential costs has been adequately addressed and determined. In that regard, we would like to call to your attention a decision of the ICANN Board on October 18, 2006, that called for an economic study to address [this and related questions] ... ICANN needs to complete this economic study and the results should be considered by the community before new gTLDs are introduced.[2]

Following its receipt of that December 2008 letter, ICANN acknowledged that:

> [S]everal members of the ICANN community requested that ICANN commission economic studies that would specifically address the possible economic consequences of new gTLDs ... Accordingly, ICANN retained the services of economist Dennis Carlton, who recently had served as the chief economist to the United States Department of Justice Antitrust Division.[3]

Thereafter, in March 2009, Carlton issued a report in which he concluded, generally, that:

> ICANN's proposed framework for introducing new TLDs is likely to improve consumer welfare by facilitating entry and creating new competition to the major gTLDs such as *.com*, *.net*, and *.org*. Like other actions that remove artificial restrictions on entry, the likely effect of ICANN's proposal is to increase output, lower price and increase innovation. This conclusion is based on the fundamental principles that competition promotes consumer welfare and restrictions on entry impede competition.[4]

But in his series of reports, Carlton never squarely addressed or analyzed whether or not the potential future benefits of ICANN's gTLD expansion would outweigh the future costs.

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[2] Letter to Peter Dengate-Thrush from Meredith A. Baker, December 18, 2008.

[3] ICANN, *Rationale for Board Decision on Economic Studies Associated with the New gTLD Program*, March 21, 2011, at page 3.

[4] *Preliminary Report of Dennis Carlton Regarding Impact of New gTLDs on Consumer Welfare*, March 2009, at pages 2-3, *available at* http://www.icann.org/en/topics/new-gtlds/prelim-report-consumer-welfare-04mar09-en.pdf

To remedy this shortcoming (of which many took notice), ICANN turned to Michael Katz[5] and Gregory Rosston for additional economic analyses. They submitted a series of three reports in June 2010, December 2010 and February 2011. In their third report—the final economic analysis of the new gTLDs received by ICANN—Katz and Rosston conceded:

> [O]ur report does not conclude that benefits will exceed costs for new gTLDs as a whole...The purpose of [our report] is to lay out a structure within which *to think about* the benefits and costs of new gTLDs.[6]

They added:

> [Our report] summarized prior studies on issues relevant to the introduction of new gTLDs. The report identified shortcomings of specific studies and concluded that existing studies were incomplete. *The central finding was that additional information should be collected.*[7]

At the end of this series of economic reports that ICANN itself had commissioned, ICANN reported:

> Ultimately, ICANN obtained reports from several economists, including some of the world's leading economists who specialize in competition issues...[T]he studies made clear that the economists did not anticipate that the costs that might be associated with new gTLDs would outweigh the overall benefits of their introduction, and determined that it was too difficult to predict...As a result, ICANN's Board has concluded that there is no economic basis that would justify stopping the New gTLD Program from proceeding and no further economic analysis will prove to be any more informative in that regard than those that have already been conducted.[8]

---

[5] Katz had also served as the chief economist of the Justice Department's Antitrust Division.

[6] Michael L. Katz, Gregory L. Rosston and Theresa Sullivan, *Reply to Comments on An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names*, February 21, 2011, at page 3 (emphasis added), *available at* http://www.icann.org/en/topics/new-gtlds/analysis-response-phase-ii-report-21feb11-en.pdf

[7] *Id.* at page 4 (emphasis added).

[8] ICANN *Rationale* at page 1.

The Carlton and Katz-Rosston reports reflect almost no actual investigation of the practical effects of the huge expansion of gTLDs that ICANN plans. It is an axiom of competition analysis that any such analysis must rest on a factual background. Moreover, these reports do nothing to demonstrate that general principles that apply in many markets actually apply to the unique nature of gTLDs and the scale of ICANN's planned increase in their number. A new gTLD is not a product in the sense that a new electric car is a product.

Domain names like *NYTimes.com* are essentially trademarks. They are small fragments of text that consumers associate with the products and services of businesses and organizations on the Internet. By convention, Internet domain names ("trademarks") have two parts separated by a period. On the left is a brief version of a product or business name and on the right is the gTLD (or non-generic TLDs such as country codes that are not at issue today).

From the perspective of the consumer, a second-level domain, such as *NYTimes*, connected to a given gTLD, such as *.com*, is essentially the same as *NYTimes.info* or *NYTimes.biz*. Competition based on differentiation of only the gTLD is expressly prohibited by trademark law and by the rules of ICANN, which has procedures that can lead to cancellation of such registrations by a non-owner of the left side of a domain name, but only after the owner successfully brings a legal action against the registrant of the infringing domain name. This key, undisputed principle of the Internet—essential to its usefulness to Internet users—refutes the simplistic Carlton claim that adding gTLDs, *ipso facto*, increases competition, improves product variety and provides more choice to consumers.

As the ICANN economists noted, the gTLDs added by ICANN in the last decade have attracted relatively few registrations, and the overwhelming majority of these merely duplicate second-level domain names already registered under *.com*. They add little or nothing to the benefits that brand owners and consumer achieve from the Internet. Today, many Internet users find desired websites by running searches on Bing, Google, or other search engines. They don't type in *NYTimes.com*, they just type in "NYTimes", or "New York Times" or "NY times" or even just "times" (try it—on Google, *NYTimes.com* is the second search result for a search on "times"). It adds absolutely nothing if the search engine then offers them a choice between *NYTimes.com* and *NYTimes.biz*.

An analogy to printed brand names may be useful in explaining why the extreme proliferation of gTLDs is contrary to the interests of Internet users. Under existing trademark law, a registration of a brand name, say "Tide", also protects the name in other type fonts, such as "Tide" and "Tide" and "TIDE" and "*Tide*". The differences in type fonts are analogous to the gTLD name after the dot in a domain name. They are differentiating markers that do not alter the sense of the brand name and mean almost nothing to the consumer.

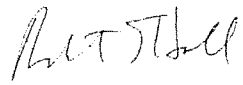
The addition of gTLDs is as if a company other than Procter & Gamble could register "*Tide*" as a trademark and use it until Procter & Gamble discovered the misuse and filed a legal proceeding against it. Under ICANN's plan to expand the number of gTLDs, Procter & Gamble would either need to preempt such misuse by paying to register "Tide" defensively under these new gTLDs, or it could elect to spend the time and resources needed to detect such registrations after the fact and then incur the expense of dealing with them individually as they are discovered. And even this assumes that it is possible to determine ultimately who the registrant is, something that is not always possible with the *Who-Is* databases available today.

Of course, it is true, as ICANN has said, that both trademark law and ICANN's procedures for dealing with cybersquatting would be available to domain-name registrants. But the proliferation of gTLDs would raise the monitoring costs of domain-name owners. ICANN has acknowledged that such proliferation would raise costs, but nevertheless maintains—without any quantification of either costs or user benefits—that the benefits would exceed these costs.

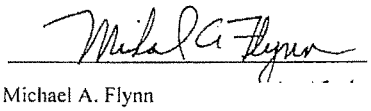
In fact, the benefits, as we have demonstrated above, are negligible. The costs are not.
Of course, the proliferation of gTLDs will create profit opportunities for companies that offer domain name registration and consulting services as they process defensive registrations under the additional gTLDs. The revenue these companies will derive from either defensive or infringing domain registrations—and the motivation behind these registrations would appear to be a matter of indifference to such companies—is a cost to legitimate domain-name owners.

Our analysis to date shows that an unlimited expansion of gTLDs would not add anything material to the product variety facing Internet users. It would merely create a costly nuisance for those users. ICANN is sponsoring a perversion of the economic analyses that it commissioned by even suggesting that this nuisance has net benefits for the Internet community. We therefore urge you to take action to block the unlimited expansion of gTLDs unless it is satisfactorily and transparently demonstrated that any such expansion—or a limited expansion on a case-by-case basis—would be in the public interest and that the benefits to any expansion would exceed the clear costs that the expansion would impose on the global multi-stakeholder community that ICANN serves.

Respectfully submitted,



Robert E. Hall



Michael A. Flynn

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Chaka Fattah, Ranking Member, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. House of Representatives

ROBERT E. HALL

Robert E. Hall is the Robert and Carole McNeil Joint Professor of Economics at Stanford University and Senior Fellow at Stanford's Hoover Institution. He served as President of the American Economic Association for the year 2010, served earlier as the Association's Vice President and Ely Lecturer, and is now a Distinguished Fellow of the Association. He is an elected member of the National Academy of Sciences and Fellow of the American Academy of Arts and Sciences, the Society of Labor Economists, and the Econometric Society, the professional organization of economists specializing in measurement issues. He is Director of the Research Program on Economic Fluctuations and Growth of the National Bureau of Economic Research. He was a member of the National Presidential Advisory Committee on Productivity. For further information about his academic activities, see Stanford.edu/~rehall . He received his Ph.D. in economics from MIT and his BA from the University of California, Berkeley.
Professor Hall is co-author of the college textbook *Economics: Principles and Applications,* now in its fifth edition, and author or co-author of numerous articles in the *American Economic Review*, the *Journal of Political Economy,* and other academic journals.
Professor Hall has advised a number of government agencies on national economic policy, including the Treasury Department, the Federal Reserve Board, and the Justice Department, and has testified on numerous occasions before congressional committees.

MICHAEL A. FLYNN

Mr. Flynn is a consulting and testifying expert economist, specializing in antitrust, economic damages, intellectual property and other complex business litigation and consulting engagements. He has extensive case experience in a broad range of industries, markets and products. Mr. Flynn studied in the PhD Program in Economics of the Massachusetts Institute of Technology, Cambridge, Massachusetts, from 1971 to 1974, where he was a National Science Foundation Fellow. He completed his general and field examinations for the PhD degree in 1974. Mr. Flynn was awarded his AB degree from the University of California, Berkeley, where he was the 1971 recipient of the Department of Economics Citation as the Outstanding Graduating Senior.

December 8, 2011

The Honorable Jay Rockefeller
The Honorable Kay Bailey Hutchinson
Committee on Commerce, Science and Technology
United States Senate
Washington, DC 20510

Dear Chairman Rockefeller and Senator Hutchinson:

The Council of Better Business Bureaus (CBBB) would like to thank you for holding a hearing on the important topic of Internet domain expansion.

CBBB concurs with the concerns expressed by the Association of National Advertisers and the nonprofit constituency of the Internet Corporation for Assigned Names and Numbers (ICANN). Currently, there is insufficient control over the rampant crime that takes place via the Internet in the form of pirating of intellectual property, identity theft, phishing scams and other types of brand infringement and consumer fraud. CBBB and its constituents – small and medium business, nonprofits and consumers – are victimized by Internet crime on a daily basis.

Before ICANN undertakes a mass expansion of potential websites, it needs to come up with a workable solution, in conjunction with international crime fighting organizations and victims of crime, to improve the ability of law enforcement to track and shut down illicit activities on currently registered Internet websites.

As a not-for-profit trade association with famous and well-recognized trademarks, CBBB has to devote considerable resources to tracking and taking action against illicit use of its trademarks on the Internet. We also have to spend scarce financial resources each year purchasing domain names in all of the different top level domains corresponding to all of our trademarks and programs to keep illegitimate users from purchasing our name and diverting traffic to their fraudulent websites. An increase in the top level domains will exponentially increase these costs.

ICANN's current proposal requires trademark holders to register their trademarks in a Trademark Clearinghouse and then purchase or block each trademark in each new top level domain (an expense that most non-profits and small businesses cannot afford). Instead of the current proposal, ICANN should block the new TLD registries from selling domains that belong to trademark holders and have been properly registered in the Trademark Clearinghouse.

As an example of the backward manner in which ICANN "protects" trademarks, it is notable to consider the experience the CBBB had in the most recently opened top level domain, the .xxx TLD operated by ICM Registry for the adult entertainment industry. Any trademark holder that wanted to ensure that its trademark was not sold in that registry had to block it during the "sunrise" period. Otherwise, ICM could sell the trademark as domain names, a common practice. In all, ICM and the registrars selling to

.xxx made approximately $23 million from this type of defensive registration by trademark holders who simply wanted to protect their good names from abuse.

Even more astounding was the fact that ICM Registry refused to accept CBBB's registration of its most famous trademark ("BBB," one of the most recognized trademarks in North America) because ICANN allowed ICM to reserved bbb.xxx as a premium name that it can later auction off to the highest bidder.

Another type of Internet crime and organizational identity theft occurred just yesterday when the BBB network email and registered torch logo were used as tools in a widespread phishing scam that sent emails to thousands of people across North America and victimized unsuspecting email recipients who believed these emails came from BBB. Despite best efforts, long hours and wasted resources, it is difficult to identify the perpetrators of phishing scams such as this.

ICANN was authorized to operate the domain naming and addressing system under the condition that it act in the public interest, per the terms of its Memorandum of Understanding with the Department of Commerce and its subsequent Affirmation of Commitments. To fulfill this public interest requirement, ICANN must balance the desire for greater competition on the Internet with suitable protections for legitimate organizations and hard working business owners. That is essential to fulfilling its public interest commitment.

Without more controls on Internet registries and registrars, the Internet will increasingly serve criminal interests over the public interest. More resources must be made available to combatting Internet crime. We recommend that these strong actions be taken before ICANN expands top level domains, an expansion that will only exacerbate these grave problems.

The Council of Better Business Bureaus and our entire BBB network appreciate the work of the Committee in helping solve these issues that impact large and small companies, nonprofits, charities and, ultimately, consumers.

Sincerely,

Stephen A. Cox
President and CEO

COUNCIL OF BETTER BUSINESS BUREAUS, INC.
4200 Wilson Boulevard • Suite 800 • Arlington, VA 22203-1838 • Phone: 703.276.0100 • Fax: 703.525.8277

Mr. WALDEN. Mr. Jaffe, thank you very much for your very thorough testimony. We are pleased to have you here.

Now we are going to turn to Mr. Thomas Embrescia, CEO of Employ Media.

Mr. Embrescia, thank you for your testimony as an Internet domain manager and registrar. So we thank you for being here. We look forward to your comments.

STATEMENT OF THOMAS EMBRESCIA

Mr. EMBRESCIA. Thank you, Chairman Walden and Ranking Member Eshoo and members of the distinguished subcommittee. I am happy to be here today with you. I am going to talk about myself as a current registry operator, one of the 22 that exist running .jobs. I am also going to talk to you about—and I don't want to date myself—my history as a licensed broadcast holder, radio and television stations over the past 40 years, right here.

I woke up this morning in my hotel, and on the hotel television channel they were talking about the things that you should see while you are in Washington, D.C. And one of the things that caught my attention was a statue of someone sitting in front of an old radio listening to Franklin Delano Roosevelt talking, these family talks on a weekly basis. So I am not quite that old, but I do go back to being raised when AM radio was the be-all/end-all on what was happening.

When I came out of college in Ohio, I got a job on an FM radio station when no one even knew what that was. The frequency wasn't around. And thanks to the wiseness of Congress, they mandated that automobile dealers put FM frequencies in the cars, and FM flourished. It took off. It gave me an opportunity to start on an FM band, create a channel. We narrowcasted where AM stations were all things to all people, they provided service for everyone; where FM stations went and suddenly became all rock or all country, soft AC.

In the 1980s, I see Congressman Latta just walked out of the room, from Ohio, but in his district, in Toledo, Ohio, the big television stations were VHF channels 2 through 13. You, in your wiseness, had created a UHF band, but no one knew what to do with it. But entrepreneurism and job opportunity created guys like me who created a television station in Toledo, Ohio, in 1985, built it from scratch, put it on the air. And suddenly the Fox Network flourished and took off and created jobs and opportunities and businesses.

Then I saw the same thing happen with cable, which at one time was strictly designed to fill in holes in rural areas in Tennessee and surrounding communities. But suddenly they decided content was important, and they started to create channels by narrowcasting again. And who thought 24–7 CNN, ESPN, MTV, and my favorite, the Food Channel, that I watch all the time and what I am doing.

And suddenly in 2000 this opportunity arose when ICANN came back and created a proof of concept round in 2004. And we were offered the opportunity to create a trusted valued source on the Internet for content. Ours happens to be HR-related. We superserve that community and do it well. And that is what we do.

And we see this expansion, quite frankly, as history repeating itself.

You have been wise in what you have allowed in the spectrum allocation, and people being creative and being able to use their initiative to create jobs, better consumer opportunities, better information on a consistent basis. I firmly believe in what we have created here in the U.S. in opportunity and the wisdom of people to be smart about how to do this. And sure, could there be bad operators? Could there be people that have some problems? I am confident that ICANN's multistakeholder model can serve that purpose.

And so I am here today to support that expansion as an existing operator, looking back at history and watching my own history of how spectrum, broadband width has created opportunity, jobs, better opportunities for consumers. So I thank you for that, and I welcome any comments you have.

[The prepared statement of Mr. Embrescia follows:]

Testimony of Thomas Embrescia, Chairman of Employ Media
Before the U.S. House of Representatives, Committee on Energy and Commerce,
Subcommittee on Communications and Technology
Hearing on ICANN's Top-Level Domain Name Program
Wednesday, December 14, 2011

Good morning Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee. I'm Tom Embrescia, Chairman of Employ Media LLC, the registry operator for the Top Level Domain .JOBS. We are one of the "22" Top Level Domains – TLDs – under ICANN management often referred to in hearings on this topic. Unlike legacy TLDs, like .COM, .NET and .ORG, the .JOBS TLD is a more recent addition to the Internet. It was part of the 2004 expansion round held by ICANN. My company, Employ Media, has been pioneering TLD expansion in its role as the registry operator of the .JOBS TLD. I am speaking to you today from this perspective, as someone who has invested millions of dollars personally in the .JOBS enterprise, and as an interested party in the expansion round currently scheduled to begin January 12 of next year.

Employ Media LLC is headquartered in Cleveland, Ohio. As the Registry Operator to ICANN, our purpose is to allocate domain names using the .JOBS TLD. Employ Media is a sponsored TLD, or sTLD, which means that it exists for the purpose of serving a defined community; ICANN delegates significant policy making authority to the Registry Operator to allocate domains in a manner that serves that community. Employ Media's Sponsoring Organization is the Society for Human Resource Management, also known as SHRM, and Employ Media is obligated to allocate domains consistent with policies set by SHRM. SHRM, in turn, is "the world's largest association devoted to human resource management." Its members are over 250,000 human resource professionals worldwide.

In my testimony today, I wish to make one critical point: TLD expansion to service the interest-specific needs of particular communities is a positive innovation and should be supported and encouraged. I have come to that conclusion based on my decades-long experience as a license operator in radio when FM began to compete with AM stations; in television when UHF began to compete with VHF in over-the-air broadcasting; later when cable began to compete with terrestrial television; and now on the Internet, as community-specific TLDs have begun to compete with generic, legacy TLDs. In each case, the opportunity to "super serve" a particular community was a spur to innovation and job creation, and I have every reason to believe that will continue to be the case.

I understand that there are many concerns regarding the procedure ICANN has put in place regarding the upcoming TLD expansion – intellectual property concerns, some lingering issues with the procedures that will apply to new TLD applications, questions regarding application fees and how ICANN will appropriate these funds – but I'm not going to address any of those issues. I'm here to affirm to this Committee that there is a demand from the private sector to gain entry to operate and compete in the TLD arena much like my company is doing now. I am of the firm belief that competition is what leads to innovation, drives business, creates jobs and provides opportunities heretofore unknown.

As one of the few pioneers of TLD expansion, and having worked closely with ICANN for over five years in almost every respect to bring a TLD to market, I believe that I am well positioned to advise this Subcommittee on the topic of the next round of TLD expansion. My views also are informed by my experience as a veteran FCC license holder in both radio and television serving markets large and small throughout the United States over the past four decades. Let me share with you my vision of Top Level Domains, a vision I've held since before acquiring a TLD license, and one I believe is even more relevant today.

I hate to date myself, but I remember the time when AM licensed operators dominated radio here in the US. This is because the AM frequency was first to market on the one hand and the only frequency available to the general population on the other. It was this reality that rendered newly created FCC spectrum, called FM, of limited commercial value. Nonetheless, and as I can personally attest, entrepreneurial-minded people willing to take risk invested into the new spectrum. From there, we had to make a go of it, first by attracting an audience and then by attracting advertisers to this audience. And we had to do this in the face of a few dominant AM stations controlling significant market share, locally and nationally. Quite frankly, at the time, people said this could not be done. In fact, this situation was an opportunity for new operators to "super serve" an audience, what we call today "narrow casting". Whereas AM stations at the time were all things to all people, generally not specializing in anything specific, FM operators took on single-minded formats, such as Hard Rock, Country, and Soft Adult Contemporary, to appeal to particular audiences 24/7. And when users were provided these new choices in the market, we know today the result: overwhelming acceptance and approval.

As a young risk-taker at the time, I benefited financially from user adoption of narrow casting in radio that was made possible by the addition of FM frequency. With this success, my family, in the mid-1980s, turned our attention to another medium, television, where we saw the parallels of entrenched VHF networks, at the time ABC, NBC, and CBS, being all things to all people with the UHF frequency being primarily unused and having limited commercial value. This enabled us to enter the market less expensively, thus creating the opportunity for networks like FOX to flourish. What we saw was an opportunity, certainly not without risk, to narrow cast. We invested into owning independent FCC television licenses, super serving an audience. Cable operators saw the same opportunity to compete against terrestrial broadcast by narrow casting, thus the creation of networks like CNN, The Food Channel, HBO, MTV, and ESPN. We know today that ESPN is a more valuable brand than its partner ABC, something no one would have predicted, but made possible entirely by the creation of new spectrum. In addition to the benefits of narrow casting, users have seen the benefits of innovation in picture quality as compared with over-the-air television. The jobs that have been created, the commerce, the greater good for society in general, all are benefits impossible to measure, and all made possible through new spectrum.

Then along came the Internet, the new medium for people to reach content of interest to them. Early on, in the mid-1990s and prior to the creation of ICANN, the US Government was encouraging people to adopt this medium, including through a program that subsidized domain name registrations in

.COM, .NET and .ORG. It was in the late 1990s, with the Internet firmly on its way to being a household medium, that it was brought to my attention the US Government was looking to privatize the Domain Name System, and that at some point in the not-too-distant future there would be an opportunity for interested parties from the private sector to acquire and operate a TLD license like .COM or .ORG. By this time, the Government had created ICANN to carry out the privatization of the domain name system. We evaluated the business opportunity. We recognized .COM was becoming all things to all people. We saw "jobs" as an important category that could be super served, narrow casted, in the form of a TLD license on the Internet. When the opportunity presented itself in 2004, we applied for the TLD .JOBS, and upon rigorous evaluation, including examination of my background in other licensing arenas and financial wherewithal, we were successful.

From there, we knew the risk was not different than in my early days with radio and television of entering a market dominated by existing licensed operators.

We established .JOBS to serve the needs of the international human resource management community, to super serve this market in a way that no other existing TLD does. Today, with not even 1% of the volume of registrations .COM has, millions of people regularly visit .JOBS web sites specifically for the purpose of using the Internet to locate the jobs employers have to offer. Moreover, we actively coordinated with our sponsoring organization to expand the variety of names that are available within our TLD to serve our community even better.

We have sought to achieve differentiation from market dominant TLDs in a number of ways. First, even though it is allowed, we've not allocated domain names in real time, as is the common industry practice under other TLDs. Instead, we've chosen to verify the identity of applicants prior to approving their applications. As a result, cybersquatting is near non-existent in .JOBS with the benefit to trademark holders of not feeling the need to defensively register, a practice we do not encourage. In fact, to my knowledge there has not been a single formal trademark dispute as a result of a .JOBS domain name registration. Second, we follow the policies of our Sponsoring Organization that, amongst other things, requires all registrants to agree to serve needs of the community as part of the registration agreement. As a result of these practices, we've gained trust in the market place as a responsible TLD operator, something we consider crucial towards gaining adoption by the very largest of employers. Today, prominent US and global employers – including AT&T, IBM, ExxonMobil, and InterContinental Hotels Group, to name a few – actively market their .JOBS URL as the destination for job seekers to locate their jobs using the Internet. A more comprehensive depiction of what all is going on in .JOBS has been submitted as an attachment to this testimony. My point is each TLD operator in its own way competes against the legacy, dominant TLDs, much like FM operators in an earlier generation competed against all-purpose AM stations.

As an existing TLD operator, I have lived through the fear that entrenched market players, primarily those most deeply invested in .COM, have shown towards new TLDs potentially disrupting their market position. I have seen how ICANN has had to deal with those motivated by protection rather than expansion. It would be easy for me to try to protect my position as one of only 22 TLDs.

However, I feel that ICANN should foster responsible innovation, competition and entrepreneurial spirit by expanding the number of TLDs.

In closing, let me emphasize one of the main insights I have derived from my own experience. Regardless of medium, history has shown there are substantial benefits to consumers and businesses alike when spectrum and bandwidth are expanded. As was true of radio and television, I have every reason to expect that the expansion of "channels" on the Internet – in the form of greater TLD variety – will respond to demand, and that this will be a major spur to innovation and job creation. I hope this Subcommittee will agree and lend its support to the ICANN model for TLD expansion.

Attachment A

Thomas J. Embrescia

Thomas J. Embrescia is a 40 year veteran of the terrestrial broadcast industry.

Mr. Embrescia spent most of his career owning and managing over 50 radio and television properties around the country including WMJI 105.7, WDOK 102.1, WQAL 104.1, 1100 WTAM, and 850 WKNR in Cleveland, Ohio. Other markets Tom has owned or been a partner in include Milwaukee, St. Louis, Indianapolis, Los Angeles and Chicago.

Tom's company Second Generation Television built and owned WUPW TV, the Fox Television affiliate in Toledo, Ohio, WTVK-TV 6, the WB affiliate in Fort Myers-Naples, Florida and KFXA, the FOX affiliate in Cedar Rapids, Iowa. They also managed KFXB the FOX affiliate in Dubuque, Iowa and KGAN. the CBS affiliate in Cedar Rapids

Tom was on the board of directors of ACME Communications, which is the owned and operated arm of the Warner Brothers Television Network, with TV stations in 5 markets. He is a partner in Media One Group owning radio stations in New York and surrounding communities. He is the majority owner of Butler Broadcasting with radio stations in Fayetteville, Ark and also owns some of the largest billboards in the State of Ohio.

Mr. Embrescia's investment arms, Second Generation Ltd. and X Gen Ltd., are owners and investors in many diverse businesses including marketing, Bio Medical, Teleradiology, manufacturing and internet, including the Top Level Domain .JOBS.

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Mr. WALDEN. Mr. Embrescia, thank you very much. And some of us actually remember AM radio as well.

Ms. Hansen, we are delighted to have you here as well. Ms. Anjali Hansen, intellectual property attorney for the Council of Better Business Bureaus. Ms. Hansen, thank you for your testimony, and please go ahead.

STATEMENT OF ANJALI K. HANSEN

Ms. HANSEN. Good morning. My name is Anjali Hansen. I am the intellectual property attorney of the Council of Better Business Bureaus, which is the umbrella organization for the 116 Better Business Bureaus across North America.

The Better Business Bureaus are a network of nonprofit organizations. For the past 100 years, our mission has been to build trust between consumers and businesses in the marketplace. Thank you, Mr. Chairman, Ranking Member Eshoo, and members of the subcommittee. Our organization greatly appreciates this opportunity to testify and tell you about the challenges that we face every day to keep our brand and logos out of the hands of fraudulent and criminal elements that run rampant on the Internet. The new top-level domains will increase these threats exponentially if ICANN does not put additional protective measures in first.

Today I am going to focus my testimony on three grave problems that I face every day protecting our trusted marks on the Internet. The first problem is the massive abuse of our marks on third-party Web sites. Every day I am bombarded with reports and links to Web sites that display our BBB torch logo and our accredited business seals without authorization. Fraudulently operated businesses copy the logos to defraud consumers into thinking that they are dealing with a reliable source. Combating these infringements takes a great deal of time. It can be difficult to shut down Web sites if the Web hosting company or registrar is not cooperative, and it is very costly to our organization.

In addition, our organization is routinely subject to sophisticated phishing attacks that defraud consumers into believing that BBB is sending them an email, but which instead, upon clicking on the Web link within the email, infects their computers with viruses. The architects of these phishing scams have used the very symbol of trust, our BBB name and logo, to victimize unsuspecting businesses and consumers.

ICANN needs to come up with better controls over fraud at this level. Frauds and criminals can currently easily purchase domain names and Web sites from registrars and Web hosting companies and then use them for illicit purposes with impunity.

The third and final major problem that I face in protecting our trusted marks on the Internet is cybersquatting. Cybersquatters register brand owners' trademarks as their own domain names. For example, they will register BBB.net, BBB.com, BBB.info. So most brand owners have adopted the costly practice of purchasing their own domain names and trademarks in all of the major top-level domains. This is called defensive registration, as you noted earlier. BBB has over 300 domain names, most of which are defensive registrations, and there are currently only 22 top-level domains. So

with the expansion, there will be hundreds, and the cost to defensively register will quickly become prohibitive.

Under ICANN's proposed framework of trademark protections, it will have a centralized trademark clearinghouse which each brand owner can register their trademark in for a fee. But registering our trademarks in this clearinghouse only guarantees us the first right to buy or block our trademarks in domains in each of the new top-level domains. Instead, ICANN should ensure that trademarks registered in the trademark clearinghouse cannot be sold to anyone other than the trademark owner in any of these new registries.

The practice of having to defensively register our trademarks in each top-level domains needs to stop. This practice simply provides an unjustified windfall of profits to registries and registrars, and takes resources away from brand holders. The most recent top-level domain to be brought online, the now famous .xxx, just profited enormously from the over 90,000 domains paid to be blocked by trademark owners who do not want their names associated with that registry. In conclusion, even more astounding was the fact that the .xxx registry refused to accept registration of our most famous mark, BBB, because it was allowed by ICANN to reserve BBB.xxx as a premium name that it can later auction off to the highest bidder.

Thank you again for taking the time to listen to the issues I and many other brand owners face, which include small businesses and nonprofits. These practices have the net effect of imposing major consumer harm. If ICANN does not address these issues, it should not set forth on its plans to increase the number of top-level domains. Thank you.

[The prepared statement of Ms. Hansen follows:]

TESTIMONY BEFORE THE HOUSE COMMITTEE ON ENERGY AND COMMERCE'S

SUBCOMMITTEE ON TECHNOLOGY AND COMMUNICATIONS

"ICANN'S TOP LEVEL DOMAIN NAME PROGRAM"

DECEMBER 14, 2011

9:00 A.M

ANJALI K. HANSEN

INTELLECTUAL PROPERTY ATTORNEY

COUNCIL OF BETTER BUSINESS BUREAUS

Good morning, my name is Anjali Hansen. I am the intellectual property attorney at the Council of Better Business Bureaus (CBBB), which is the umbrella organization for the 116 BBBs across North America. I greatly appreciate the opportunity to discuss the issue of the expansion of Internet top level domains with this Subcommittee. I am here to testify on the existing threats to trust on the Internet and how a large-scale adoption of new Top Level Domains (TLDs) may greatly increase these threats if specific measures are not taken in the process of expanding the number of TLDs.

The Better Business Bureaus are a network of non-profit organizations which for the past 100 years have been dedicated to building trust between consumers and businesses. We are uniquely positioned as a bridge between the business community and their customers, and we take seriously our role as an unbiased source of information on which businesses are worthy of your trust.

My workdays are spent on the front line, defending the iconic brands of the BBB—the BBB Torch, trusted by consumers and proudly displayed by ethical businesses; the Wise Giving Alliance logo, that helps consumers identify charities worthy of their donations; and other BBB marks, that also stand for trust in the marketplace. Because the BBB marks are so trusted by consumers and relied on by businesses, they are high profile targets for scammers and criminal groups, who unceasingly try to commandeer them to gain instant credibility and defraud consumers. Our staff and financial resources are strained to the limit today just trying to keep up with these problems which occur almost exclusively online.

Let me tell you what I am up against. I have thousands of referrals of unauthorized online use of our seals and trademarks each year. In addition, like many well-established companies and organizations, BBB's good name and brand is subject to massive fraud and abuse. We are in the midst of the third week of an ongoing, relentless phishing scam using our email address, trademarks and logo. The scam

has been sent to tens of thousands . . .perhaps millions . . . of recipients throughout North America, and warns that someone has filed a BBB complaint against the email recipient and that they need to click a link (purporting to be our link or logo) to respond. Anyone who clicks on the link is taken to a series of redirected websites and their computer is infected by a virus. I have been spending countless hours tracking the emails and reporting them to the Secret Service, FBI and numerous web hosts. But the scammers are sophisticated and leap rapidly from website to website, keeping us trailing behind after unsuspecting recipients have been victimized. This has crippled our organization on several occasions, causing failures in our phone system and website scam reporting portal due to the massive volume of calls and e-mails we are receiving from confused consumers and business owners.

We are besieged and we need resources and help in enforcing our own brand on the Internet.

While we commend the Internet Corporation for Assigned Names and Numbers (ICANN) for its efforts over the past several years to address these crucial issues through various mechanisms, more needs to be done. We remain concerned that even with the safeguards planned by ICANN, the launch of new top level domains is going to make protecting our brand -- and those of many other businesses and nonprofits -- a great deal more difficult and costly unless specific measures are taken in the process of expanding the number of TLDs.

We recognize that ICANN has made the barriers to obtaining a Top Level Domain quite high to ensure criminal elements do not get access to a registry. However, the fraud currently taking place on the Internet is not perpetrated directly by registry operators, but rather by individuals who are allowed to buy domain names incorporating our trademarks or which set up websites that display our marks without authorization. These are purchased at the second level through registrars and web hosts that

impose minimal barriers to entry at that level. We think the increase of new TLDs will lead to a corresponding proliferation of domains and websites we will have to police , unless additional protection measures at the registrar level are put in place. The increased protection at the registrar level must match the high barriers to obtaining a new TLD.

We also acknowledge that ICANN has tried to help by adding a new process of protection of trademarks that will be implemented with this new round of TLDS. Under this proposed framework, CBBB will have the ability to register its trademarks in ICANN's central Trademark Clearinghouse, but registering our trademarks in this clearinghouse only guarantees us first right to *buy* our trademarks as domains in each new TLD. This is called defensive domain registration and is already a burdensome cost to us and every other brand owner trying to ensure online protection of their trademarks. We own over 300 domain names and many of those are defensive registrations in TLDs where we have no intention of operating a website, but we nonetheless feel compelled to purchase in those TLDs to keep our trademarks out of the hands of fraudsters. There is no set price as to what these registries will charge for the defensive registrations and the costs when multiplied by potentially hundreds or more new and unsupervised registries, will get prohibitive.

Having to defensively register our own marks to protect them is a stunning reversal of trademark protection in the U.S. where a single registration with the U.S. Patent & Trademark Office should act as notice that nobody else but BBB can use those marks. This standard of protection should be extended to the internet. One potential solution that we would encourage ICANN to explore is to block the new TLD registries from selling domains that incorporate trademarks that have been properly registered in the Trademark Clearinghouse. Only registered trademark holders that have registered in the Trademark Clearinghouse should be allowed to acquire a domain name corresponding to that trademark in any TLD.

It is notable to consider the experience the CBBB had in the most recently opened top level domain, the .xxx TLD operated by ICM Registry for the adult entertainment industry. Any trademark holder that wanted to ensure that its trademark was not sold in that registry had to block it during the "sunrise" period. Otherwise, ICM could sell the trademark in domain names. In all, ICM and the registrars selling to .xxx have made a reported $20 million from such registrations to block over 90,000 trademarks that were filed during the sunrise period of that TLD. This has creating a unjustified financial windfall for an adult entertainment registry because trademark holders do not want to have their trademarks sold and abused in that TLD.

Even more astounding was the fact that ICM Registry refused to accept CBBB's registration of its most famous trademark "BBB" because ICM was allowed to reserve bbb.xxx as a premium name that it can later auction off to the highest bidder. We could not even defensively purchase our own trademark.

We are participating in the constituency groups of ICANN and would like to work to reduce the current level of fraud and abuse on the Internet and the high costs of protecting brands online. We believe that BBB's traditional role of brokering self-regulatory solutions could be of use in developing these crucial policies.

Finally, in conclusion, we believe in an Internet that is open and competitive and innovative. We do not request excessive regulation of the Internet by governments throughout the world and believe in the rights to freedom of expression on the Internet. On the other hand, it serves nobody's interests but those of criminals if there is insufficient focus on crime on the Internet. It becomes a place of mistrust and widespread fraud.

Without more controls on Internet registries and registrars, the Internet will increasingly serve criminal interests over the public interest. We recommend that ICANN's plans to expand top level domains include procedures that encourage the application of standards by registries and registrars, which in turn will help reduce costs to businesses and restore the trust of consumers.

Lastly, I want to again thank the Committee for convening a hearing on such an important issue. We look to your leadership in protecting American consumer and business interests.

Thank you for your time.

SUMMARY OF TESTIMONY OF ANJALI HANSEN

HEARING BEFORE THE SUBCOMMITTEE ON TECHNOLOGY AND COMMUNICATIONS

DECEMBER 14, 2011

The Better Business Bureaus have for the past 100 years been dedicated to building trust between consumers and businesses. My workdays are spent on the front line, defending the iconic brands of the BBB. Because the BBB marks are so trusted by consumers and relied on by businesses, they are high profile targets for scammers and criminal groups, who unceasingly try to commandeer them to gain instant credibility and defraud consumers. Our staff and financial resources are strained to the limit today just trying to keep up with these problems which occur almost exclusively online.

Like many well-established companies and organizations, BBB's good name and brand is subject to massive fraud and abuse. We fear the proliferation of new TLDs will lead to a corresponding proliferation of domains and websites we will have to police. While ICANN will ensure that top level domains are purchased by reputable registry operators, most of the fraud takes place by website and domain registrants and there are few controls at that level.

ICANN's process of protecting trademarks under the new TLD program is too burdensome and costly. We will have to pay to register our trademarks in ICANN's central Trademark Clearinghouse, which then gives us the option to *buy* our trademarks as domains in each new TLD to keep our trademarks out of the hands of fraudsters. One potential solution is to block the new TLD registries from selling domains that incorporate trademarks that have been properly registered in the Trademark Clearinghouse.

Without more controls, the Internet will increasingly serve criminal interests over the public interest. We recommend that ICANN's plans to expand top level domains include procedures that encourage the application of standards by registries and registrars, which in turn will help reduce costs to businesses and restore the trust of consumers.

Mr. WALDEN. Ms. Hansen, thank you for the good work of the Better Business Bureau and for being here today and sharing your concerns.

We will go now to Mr. Joshua S. Bourne, president of the Coalition against Domain Name Abuse.

Mr. Bourne, we are delighted to have you here today. Pull that microphone close, and we look forward to your testimony.

STATEMENT OF JOSHUA S. BOURNE

Mr. BOURNE. It is uncomfortably close, as you said.

Well, thank you very much. Good morning, Chairman Walden. Good morning, Ranking Member Eshoo and distinguished members of the committee. Thank you for convening this hearing on the intention of ICANN to expand the number of new gTLDs that will be made available to the public. As you know, ICANN's Board approved this policy on June 20 of this year, and ICANN plans to open the first and only announced application period on January 12.

Given the significant impact that this policy will have on the Internet and the recent dialogue about it, CADNA truly appreciates the chairman's decision to hold this hearing today. As you said, my name is Josh Bourne, and I am the president of CADNA. Over 4 years ago, with the help of leading brand owners, we founded CADNA, which is a 501(c)(6) nonprofit association, to combat a variety of abuses on the Internet. CADNA represents businesses vital to the American and global economies from a wide range of commercial industries, and our members include companies such as Dell, DirecTV, Eli Lilly, Hewlett-Packard, HSBC, LEGO, Marriott, New York Life, and Wells Fargo.

Our mission is more relevant today than it has ever been as we look for solutions to reduce or eliminate cybersquatting and to work constructively with ICANN, the U.S. Congress, the Department of Commerce, and all other stakeholders to improve the gTLD policy, ultimately supporting all who agree that this policy has flaws and should not move forward without further refinement.

Our current recommendations are a result of a long process that started after the ICANN Board approved the gTLD policy back in June. Through countless calls and meetings with brand owners, public and private Internet governance experts, trade associations, and the U.S. Government, we identified several aspects of the policy that were driving the majority of anxiety in the business community that would lead to unacceptable costs for businesses and open the door to new opportunities for cybercriminals.

Fortunately, according to Module 6, Term and Condition Number 14 in ICANN's Applicant Guidebook, quote, "ICANN reserves the right to make reasonable updates and changes to this Applicant Guidebook and to the application process at any time." ICANN's recent change to include a provision for applicants to file for financial support is an example of how the organization can still introduce productive improvements into the new gTLD program. If ICANN needs more time to get these items done, then it should strongly consider delaying the application period or commit to acting upon these recommendations.

Our research efforts and conversations with hundreds of potential participants in the application process have resulted in several recommendations. I will be the first to admit that they need further refinement and development, and there may be more adjustments necessary; however, CADNA believes that they can serve as the basis for further dialogue with the Internet community and ICANN.

If the new gTLD policy moves forward, here are some concrete steps that can be taken to improve the conditions surrounding it. First, a declaration by ICANN of when the next applicant round will take place would relieve much of the anxiety surrounding the first application period. CADNA has found that businesses feel forced into applying for new gTLDs in this first round lest they be put at a disadvantage relative to their competitors, who may gain an edge by acquiring their own gTLDs.

Second, businesses are worrying about dealing with cybersquatting that will occur to the left of the dot in the new space. In other words, they are worried about the abuse and defensive registrations that they will need to pay for in open-registry-model new gTLDs in order to reduce the impact cybersquatting will have on their businesses and customers. To alleviate this issue, ICANN should require open registries to give brand owners the option to buy low-cost blocks on their trademarks before any registration period opens. This could be offered at a lower cost than sunrise registrations have been priced at in the past. And this precedent has been set with the blocks offered by ICM registry in .xxx, where the blocks are made in perpetuity for a single nonrecurring fee.

Third, if ICANN is awarded a new IANA contract, NTIA should consider awarding it for a short period of time, perhaps only 1 or 2 years, and during that time there should be an evaluation of whether ICANN followed through on its commitments with regard to the gTLD process, and an extension of the contract should be contingent on conducting internal reforms to improve governance and transparency.

I see that I am running out of time. May I have a little bit of additional time? I have only got one more page.

Mr. WALDEN. Finish your testimony, yes, sir, please.

Mr. BOURNE. Thank you.

Fourth, the U.S. Congress should immediately update the Anticybersquatting Consumer Protection Act, or ACPA, in such a way that not only curbs and deters cybersquatting in the existing TLDs, what we have today, but anything that might come in the future.

To ease the cost on private enterprises and nonprofits alike, to ease the anxiety on the business community, and to ensure that consumers are shielded from chaos and fraud as much as possible, we need to identify and prioritize achievable solutions. Commitments from ICANN, Congress, and the administration that they will implement these proposals would go a long way, but, in the end, more time and a formal process to review the policy may be necessary.

Mr. Chairman, you have been an outspoken leader on Internet issues and on Internet governance. CADNA would like to seize this opportunity with you and your committee to constructively improve

the current policy to the benefit of all Internet users. We should harness the renewed attention that CADNA's colleagues in the association, corporate and nonprofit worlds, as well as Members of the U.S. Congress and the administration have given the new gTLD program lately by pursuing necessary and achievable fixes such as those we have laid out. Thank you for this time and this opportunity to speak before you and your distinguished committee this morning.

[The prepared statement of Mr. Bourne follows:]

Summary of Testimony of Josh Bourne
President, Coalition Against Domain Name Abuse

The Coalition Against Domain Name Abuse (CADNA) is pleased that the Senate Committee on Commerce, Science and Transportation is holding a hearing to examine ICANN's New gTLD Program.

CADNA's aim is to be a constructive partner in the Internet governance process. We have always supported ICANN's multistakeholder system and strongly believe that with some reforms, ICANN can better fulfill its designated mission. However, ICANN's relationship with the business community – a group that will be significantly impacted by the New gTLD Program, and likely could bolster the success of the Program if the community had more confidence to invest in it – remains antagonistic and continues to worsen as the new gTLD application period draws closer. We hope that this hearing will open a more fluid and productive dialogue between ICANN and the business community. By establishing such a dialogue, it is possible to change the New gTLD Program in such a way that it will be less harmful to companies and their consumers. Although more time would be helpful to allow for revision, it is not too late to modify the Program. Module 6, Term and Condition #14 in ICANN's Applicant Guidebook states that "ICANN reserves the right to make reasonable updates and changes to this applicant guidebook and to the application process at any time by posting notice of such updates and changes to the ICANN website, including as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process."

CADNA has put together some thoughts on how ICANN, Congress and the NTIA can improve the New gTLD Program and Internet governance in general. These suggestions are meant to serve as a starting point for further discussion. They have been included for additional consideration and refinement, and are explained in further detail in the written testimony:

- ICANN should declare when the next applicant round will take place would relieve much of the anxiety surrounding the first round.
- ICANN should require registries to give brand owners the option to purchase a block for their trademarks before any registration period (including Sunrise or Landrush) opens.
- If ICANN is awarded the new IANA contract, its structure and policy development process should also be subject to an audit. To ensure that this is done, the contract should be renewed for a short period of time – perhaps only one year. During this year, there should be an evaluation of whether ICANN followed through on its commitments with regard to the gTLD process, and extension of the contract should be contingent on conducting internal reforms to improve governance and transparency.
- The U.S Congress should take much-needed action to improve the language of the Anti-Cybersquatting Consumer Protection Act (ACPA), so that it provides proper deterrents against cybersquatting.
- While ICANN should not adjust the cost of a single application, we believe ICANN should lower the cost of an applicant's subsequent applications, provided they have trademarks for the applied-for strings that predate 2008. Many businesses that choose to apply for their own gTLD will likely also feel they need to apply for other gTLDs, either in other languages or scripts, or for other vital business units.

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Testimony of Josh Bourne

President, Coalition Against Domain Name Abuse

Before the Subcommittee on Communications and Technology of the

United States House Energy and Commerce Committee

Hearing on ICANN's Top-Level Domain Program

December 14, 2011

Chairman Walden, Ranking Member Eshoo, and distinguished members of the committee, thank you for convening this hearing on the intention of the Internet Corporation for Assigned Names and Numbers (ICANN) to expand the number of generic top-level domains (gTLDs) in the domain name space. As you know, ICANN's board approved this policy on a vote of 13 to one (with two Board members abstaining) on June 20, 2011 and ICANN plans to open the first and only announced application period on January 12, 2012. Given the significant impact that this policy will have on the Internet and the recent public dialogue about it, CADNA appreciates the Chairman's decision to hold this hearing today.

My name is Josh Bourne and I am the president of the Coalition Against Domain Name Abuse (CADNA). Over four years ago with the help of leading brand owners we founded CADNA, a 501(c)(6) non-profit association, to combat a variety of abuses on the Internet. CADNA represents businesses vital to the American and global economies from a wide range of commercial industries including financial services, manufacturing, pharmaceutical, leisure, high technology, and manufacturing. Our members include companies such as: Dell, DIRECTV, Eli Lilly, Hewlett-Packard, Hilton, HSBC, LEGO, Marriott, Nationwide, New York Life, Wells Fargo, and Wyndham.

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CADNA was founded in response to the growing international problem of cybersquatting, which is the bad faith registration of a domain name that includes or is confusingly similar to an existing trademark. In addition to the mounting legal costs that companies now face to defend their own trademarks in the domain space, this infringement costs organizations billions of dollars in lost or misdirected revenue. CADNA works to decrease instances of cybersquatting in all its forms by facilitating dialogue, effecting change, and spurring action on the part of policymakers in the national and international arenas. CADNA also aims to build awareness about illegal and unethical infringement of brands and trademarks online. In the four years since its inception, CADNA has generated new intelligence that helps inform and expertly guide its members and increase awareness of CADNA's mission. CADNA seeks to make the Internet a safer and less confusing place for consumers and businesses alike.

Our mission is more relevant today than it has ever been as we look for solutions to reduce or eliminate cybersquatting and to work constructively with ICANN, the U.S. Congress, the Department of Commerce and all other stakeholders to improve the gTLD policy.

For the past four years, CADNA has participated in the development of the gTLD policy through the channels made available to the public by ICANN. We are intimately familiar with the policy and understand its potential benefits, but the policy has some practical flaws. We have a long public record of our comments and suggestions to ICANN. We are pleased that some of our suggestions have been incorporated but in our opinion there are several more improvements that can be made.

Our current recommendations are a result of a long process that started after ICANN approved the gTLD policy on June 20, 2011. Through countless calls and meetings with brand owners, public and private

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Internet governance experts, trade associations, and the U.S. government, we identified some aspects of the policy that were driving the majority of anxiety in the business community. On November 1, CADNA convened a conference in New York entitled "What's at Stake: The Reality of ICANN's New gTLD Program for Brands" to brainstorm with 85 representatives of companies about the new policy's challenges and how to use Module 6, Term and Condition #14 in ICANN's Applicant Guidebook. It states that "ICANN reserves the right to make reasonable updates and changes to this applicant guidebook and to the application process at any time by posting notice of such updates and changes to the ICANN website, including as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process." ICANN's recent change to include a provision for applicants to file for financial support is an example of how the organization can still introduce productive improvements into the New gTLD Program. If ICANN needs more time to get these items done, then it should strongly consider delaying the application period, or commit to acting upon these recommendations before the application period concludes and communicating to applicants what will be required of them as a result of these proposed solutions.

Our research efforts and conversations with hundreds of potential participants in the application process have resulted in several recommendations. I will be the first to admit that they need further development, but CADNA believes that they can serve as the basis for further dialogue with the Internet community and ICANN.

Here are some concrete steps that can be taken to immediately improve the implementation of the New gTLD Program:

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Announce a Second Round

A declaration by ICANN of when the next applicant round will take place would relieve much of the anxiety surrounding the first application period. CADNA has found that businesses feel forced into applying for new gTLDs in this first round, lest they be put at a disadvantage relative to their competitors who may gain an edge by acquiring their own new gTLDs.

Businesses are making decisions by weighing the consequences of not participating in this first round when it could be 5 or more years, a lifetime in this digital age, before they could apply again. For many companies that is too long, should their competitors act now and begin to extract (yet unknown) benefits from a gTLD of their own.

This is not the only source of the anxiety felt by businesses. Other unresolved questions include: Why is it so expensive for one brand owner to apply for multiple gTLDs when the applications are nearly identical? Will new gTLDs lead to more cybersquatting and fraud? How do I rationalize the high cost of defensive registrations once open registries begin to launch?

Provide the Option to Block Trademarks

Businesses are worried about dealing with the cybersquatting that will occur to the "left of the dot" in the new space – in other words, they are worried about the defensive registrations that they will need to pay for in open-registry-model new gTLDs in order to reduce the impact cybersquatting will have on their businesses and customers. To alleviate this issue, ICANN should require registries to give brand owners the option to buy low-cost blocks on their trademarks before any registration period (Sunrise or Landrush) opens. This can be offered at a

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lower cost than sunrise registrations have been priced at in the past – this precedent has been set with the blocks offered in .XXX, where the blocks are made in perpetuity for a single, non-recurring fee.

Update the Language of the Anti-Cybersquatting Consumer Protection Act (ACPA)

Cybersquatting to the left of the dot is already a massive problem; with approximately 200 million domain name registrations – concentrated mainly in .COM – there already exist millions of brand-infringing domains. We know it is unlikely that the new gTLDs will garner this volume of cybersquatting, but that doesn't mean they won't have a significant impact. In reality what we need is an immediate update to U.S. law and a process that not only curbs and deters cybersquatting in the existing TLDs, but any new ones that are created.

At this point, CADNA's best guess is that there could be around 800 applications in early 2012 during the three-month application period. Of those estimated 800 applications, what CADNA has also come to realize is that likely two-thirds to three-quarters of applications could come from strategic enterprises that will choose to run their registries in a "closed" way, for their own internal marketing uses and will not make second-level domain names available to registrants. That leaves about 200 to 300 applicants representing communities or acting as entrepreneurs pursuing mainly geographic and generic gTLD strings that will likely be "open" in the sense that they sell second-level domains to registrants, some of whom will be cybersquatters.

Cybersquatting to the right of the dot is very unlikely to occur – this is a complex application, it's an expensive process, the planned evaluation appears to be rigorous, and the objection process

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would certainly allow the owner of a trademark to prevent a party without rights from receiving a contract from ICANN. Therefore, the after-the-dot concerns for companies with very unique and strong trademarks are mainly related to competition. Will I be at a disadvantage? If I don't apply and new gTLDs become popular, will my current URLs look out of date?

Offer Reduced Pricing for Applicants that Apply for Multiple gTLDs

One of the major sources of the anxiety felt by businesses around the New gTLD Program is the cost they will incur in pursuing multiple gTLDs. While ICANN should not adjust the cost of a single application, we believe ICANN should lower the cost of an applicant's subsequent applications. Many businesses that choose to apply for their own gTLD will likely also feel they need to apply for other gTLDs, either in other languages or scripts, or for other vital business units' and brands' monikers. This pricing model should be limited to trademark holders whose trademarks predate 2008, when the ICANN Board officially approved the GNSO's recommendation to introduce new gTLDs.

Place Conditions on the IANA Contract

If ICANN is awarded a renewed IANA contract, NTIA should renew the IANA contract for a short period of time, perhaps only one year. In this one year, there should be an evaluation of whether ICANN followed through on its commitments with regard to the gTLD process and an extension of the contract should be contingent on conducting internal reforms to improve governance and transparency.

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As the process moves forward, CADNA believes there will be many more improvements that can be made. To ease the costs on private enterprises and non-profits alike, to ease the anxiety on the business community, and to ensure that consumers are shielded from chaos and fraud as much as possible, we need to identify and prioritize achievable solutions. Although more time would be helpful to allow for revision, in the coming months, CADNA intends to monitor progress and to research and develop other recommendations.

Mr. Chairman, you have been an outspoken leader on Internet issues and on Internet governance. CADNA would like to seize this opportunity with you and your committee, the Administration, and other private and public partners to constructively improve the current policy to the benefit of all Internet users.

We should harness the renewed attention that CADNA's colleagues in the association, corporate and nonprofit worlds, as well as members of the U.S. Congress and the Administration, have given the New gTLD Program lately by pursuing necessary and achievable fixes such as those that we have laid out. Thank you for your time and this opportunity to speak before you and your distinguished committee.

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Mr. WALDEN. Mr. Bourne, thank you very much for coming today.

And to all our witnesses, thank you very much for your enlightening testimony.

Mr. Pritz, I want to start with you. At the Senate Commerce hearing last week on the issue, you announced that ICANN would reduce the fee for a new gTLD to $47,000 for applicants in the need of financial assistance. So I have a couple of questions here. How can ICANN determine what constitutes an applicant in need of financial assistance? Will lowering the fee ironically make it more affordable for individuals with bad intent to engage in cybersquatting? And does ICANN have the ability to delay?

Mr. PRITZ. The criteria for awarding financial assistance, as all things, was developed by the ICANN community. And so seeing this issue, a cross-constituency group was formed to consider this issue and develop the criteria by which applications for financial aid would be considered. And they are, one——

Mr. WALDEN. Can you make that available to us then, whatever those criteria are that would meet this?

Mr. PRITZ. I certainly can, both the working group report and then the staff embodiment of that that was passed by the ICANN Board, which are operation in the public interest, a TLD operating in the public interest; an applicant that is truly needy that can demonstrate it in some way. But to address your second question really, an applicant that demonstrates some financial and operational wherewithal, either managing big projects in the past or some financial backing from other sources. And so under each of those criteria there are subcriteria to measure each of the applicants.

Mr. WALDEN. Mr. Pritz, you have heard the testimony. I mean, you are involved in this very, very deeply. It seems like there is concern pretty strongly expressed, representing a pretty broad-based set of organizations, that this may not be quite ready for prime time. Do you have the ability to delay? And what would that entail?

Mr. PRITZ. So we are really responsive to the broad Internet community, and so here is why we think the solutions that we have in place for protections are good, and here is why we think the process is done. We think they are good—one of the hallmarks of the ICANN model is that when we are faced with creating a set of trademark protections, we can get a bunch of world-class IP experts in a room from all over the world and have an extended meeting over a period of months and have real experts in those fields develop protections. You know, how would you go about it? You would get experts in trademark protection. We got experts in malicious conduct mitigation, such as the head of the Anti-Phishing Working Group and other first responders. They are the ones we rely on to develop these solutions.

Mr. WALDEN. So I guess one of the suggestions involved some sort of trademark clearinghouse, where if you registered your trademark there, then you wouldn't have go pay the registrars to protect it defensively everywhere else. Is that something that is reasonable? Is that something that could be done? Was it recommended in the process?

Mr. PRITZ. Yes. So the trademark clearinghouse exists. And the purpose of the clearinghouse is that so that trademark holders don't have to register with each new TLD for protections. They only have to register once, and all TLDs are obligated to utilize that clearinghouse in providing services. And the details behind how that operates was developed by this set of 18 intellectual property experts that over a period of months developed the details behind it.

Mr. WALDEN. Let me go to maybe Mr. Bourne or Mr. Jaffe to comment on does that process work? Is it as recommended? Mr. Jaffe?

Mr. JAFFE. We don't believe so. And I think this is a classic example of how what is called consensus really is not.

What ICANN did is they created a group, which is called the Implementation Recommendation Team, which was a group of 18 experts in trademark protection on the Internet. In the statement presented to ICANN and the public at large, the IRT noted that a sizable—I emphasize a sizable—number of our team would have preferred status quo, with no new gTLDs until better rights protection mechanisms are in place for the existing gTLDs.

In addition, the IRT emphasized that others in the IRT group favored only the measured introduction of community-based gTLDs. While it was true that a few of the members thought that it should go forward, that is far from consensus. The broader group said don't do anything, or if you are going to do something, do it in a very small rollout, just as Congressman Waxman was talking about.

So you can't just claim that there is consensus; you have got to actually look and see how it works within their organization. And there wasn't consensus there or in many other areas.

Mr. WALDEN. With the indulgence of the committee, Mr. Bourne, could you comment on this?

Mr. BOURNE. Yes. Thank you.

Two things that I want to say about that. One is 2 weeks ago I was on-site with a pharmaceutical company. They are in consumer health, they are in many areas. They have amassed tens of thousands of domain names that they registered. And I thought to ask them, I said, how many .xxx blocks did you buy? They immediately answered, over 100. And they said it was probably the best investment that they have made in a long time, though, because they never have to pay for them again.

So this is a really smart and innovative idea of ICM registry, whereas other registries and registrars typically charge a rent or a tax annually on all those BBB domains and everything else. And it is a painful, forever, ongoing process to secure and maintain a portfolio of those clearly descriptive domain names. So that is something that ICANN, I think, should make mandatory if this thing moves forward, to require all registries to make it more cost-effective for businesses.

And the second thing that occurs to me is that today we have got 200 million domains, give or take. We have 22 gTLDs, this is true, but we also have hundreds of country code domains around the world. About half of them are in .com, about 100 million. And there are probably tens of millions of cybersquatted domain names.

We have a serious problem in the traditional space with respect to cybersquatting. I think that if Congress has one in a most outstanding role in all of this, it is to pursue updating a 1999 law that has not led to any deterrence whatsoever, the ACPA. And it is something that the Judiciary Committees are looking at now.

Mr. WALDEN. All right. I am going to have to cut you off. The committee has been very indulgent. I went about a minute and a half over.

Before I recognize my friend, the ranking member, I would like to insert in the record letters from the Center for Association Leadership and from Name.Space, Inc., who have written the committee with comments as well. Without objection, they will be entered into the record.

[The information follows:]

December 13, 2011

The Honorable Greg Walden
Chair, Subcommittee on Communications and Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member
H2-564 Ford House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

Thank you for the opportunity to officially weigh-in on the important topic of the Internet Corporation for Assigned Name and Numbers (ICANN) generic top-level domain (gTLD) expansion. ASAE is a 501(c)(6) organization representing primarily trade and professional organizations in all 50 states; our 22,000 members represent 11,000 associations ranging from large international organizations to one-person local groups. What unites our membership is that associations provide for the advancement of an industry or profession through education, training, advocacy, and community. ASAE has joined fellow associations and business colleagues as a member of the Coalition for Responsible Internet Domain Name Oversight (CRIDO), which is testifying at your hearing tomorrow. We support the coalition's overall position on this issue, and felt it necessary to provide the nonprofit community's viewpoint to supplement their testimony.

The association community has a vested interest in the expansion of gTLDs and has been involved in submitting comments on the process since its opening in 2008 (see ASAE's original comments to ICANN at www.asaecenter.org/ICANN). As an organization that represents many professional and trade associations, we are concerned with the implications that the flawed gTLD approval process will have on the nonprofit community. Associations represent professions and trades and, as such, have a vested interest in how their members will be represented on the Internet. Recently, ICANN engaged in a similar expansion with the ".jobs" gTLD, opening its purchase up to competition. The domain registrar (who was approved by ICANN) set up a flawed distribution process that, in essence, monopolized the expanded use of .job to one organization that is forcing nonprofit job boards to either join their organization (at a high membership rate) or compete with their similarly named job boards. For example, the website www.nativeamericanjobs.com is run by a small nonprofit dedicated to serving a minority job market. With the creation and release of nativeamerican.jobs by this new domain registrar, this small Native American nonprofit has seen its business cut in half and has received complaints from confused customers going to the other site.

This is a small example of the confusion that will exist in the association community if the current ICANN plan and pricing go into effect. National architecture associations (either the professional associations for architects or their trade counterparts) for example will have to spend hundreds of thousands of dollars annually to buy and protect ".architects" or face brand confusion from an individual or big business that buys the gTLD first. This problem is exacerbated if the purchased gTLD is even more specific: ".asae" or ".aia." (American Institute of Architects) for example. The protection for such associations given by ICANN is inadequate: notice that the period for filing objections to ICANN over new gTLDs takes place four months after companies can begin to buy them, driving up the time and cost for associations and nonprofits to fight a gTLD's purchase by an unaffiliated business. Associations, who

use their revenue for their tax-exempt purpose, would be forced to compete with businesses to secure their brand recognition through new gTLDs.

In addition, the association community is concerned about the threat of cyber squatting and cyber-security for its brand. Again, to use the .architects example, a spammer could put forward the capitol to buy .architects and then use the domain to cause brand confusion or spread intentional misinformation about the profession. This is especially concerning for more "controversial" professions and trades, or those associations whose members are considered a current political topic. Imagine the damage ".banker" or ".broker" could do for those professional organizations if the gTLD was bought by someone with malicious intent, as well as the cost to contest such a purchase for the nonprofits. This is a serious concern that ICANN will unlikely be able to address. ASAE has tried to work with ICANN for years on taking down malicious .job domain usages, but ICANN has failed to work with associations on these issues. This problem of cyber squatting would be magnified as the number of gTLDs increase exponentially.

Finally, ASAE is concerned that the current process would confer legitimacy on an organization simply because it had enough money to purchase a gTLD. Imagine an individual or company purchasing ".architect" who was not an architect or an architect licensed in the United States. Such information would not necessarily be available to the public, but users would assume that such an individual or company would be a legitimate and licensed architect simply because they have a right to that gTLD. This is an even more troubling scenario if that organization or person intends to use the domain for cyber squatting, as discussed above.

If this issue were being considered through legislation or the regulatory process, ASAE would be confident that its views would be heard or considered appropriately by the relevant federal officials. Unfortunately, with ICANN we have little confidence in their ability to consider our view and their history shows why. As stated, ASAE has tried to work with ICANN on this issue since 2008 and, as witnesses from CRIDO will explain, the organization has so far ignored our suggestions and concerns. With the economic impact this process could have on U.S. businesses and the nonprofit community, we would have hoped that ICANN would have addressed the application and appeals process, working with us to figure out a way to ensure that nonprofits would stand a chance in competing with big business and moneyed cyber squatters to gain access to their own gTLDs. To this point, ICANN has only stated that they have had a lengthy process and stood by that excuse. ASAE feels that time is not the measure of good public policy, but an open and collaborative process is.

We hope that through your hearing tomorrow, you can impress upon ICANN the importance of working with the nonprofit community and their partners in the creation of gTLDs. Failure to do so will lead to untold damage to the reputation of associations and nonprofits on the Internet, as well as thousands of litigation dollars spent by these same organizations to try and defend themselves from this reality. Please feel free to contact us with any questions or concerns on this issue.

CC: Members of the Subcommittee on Communications and Technology

name.space, inc.
134 West 37th Street, Suite 200 New York, New York 10019 212 979.0642 http://about.namespace.org

Before the House Energy and Commerce Committee:
ICANN's Top-Level Domain Name Program
Hearing Date: December 14, 2011

Thank you this opportunity to present the written views of Name.Space and its board of directors to the Energy and Commerce Committee's hearing on ICANN and the expansion of Top Level Domains.

I am Paul Garrin, the founder of Name.Space, a first mover in the Internet Top Level Domain registry field, working to bring our original generic TLDs to market since 1996, predating ICANN by two years.

Name.Space recognizes the concerns of intellectual property holders, and we believe that we have a constructive and workable solution for policy and practice that will satisfy all parties, and welcome this opportunity to present our views to the Committee on Commerce at this December 8, 2011 hearing.

This testimony is intended to serve the committee members and parties concerned about the positive impact of new generic Top Level Domains by raising awareness of our position and vision for a constructive approach to bringing generic Top Level Domains to market in a way that protects intellectual property owners, and creates new opportunities for branding, consumer choice and confidence, and free expression.

Historically, the commercialization of the Domain Name System has been plagued with ill-will. Cyber-squatting, domain name speculation, and fraud cost legitimate publishers, content creators, and brand owners millions of dollars in settling disputes, paying inflated prices from domain auctioneers and speculators, and in defensive domain name registrations. There are many conditions that led to this cascade of malfeasance resulting in defensive actions, un-budgeted costs, and damages to intellectual property and brand owners, and consumers. Foremost, is the lack of competition in the commercial TLD registry space. The incumbent registries, through their aggressive practices have done nothing but fuel the feeding frenzy on unmitigated domain name speculation in order to maximize their profits without regard to the negative consequences against brand owners and the overall utility of the DNS. ICANN's own policies only partially address brand protection through the (optional) sunrise period that precedes the launch of a new gTLD to the general public, and the trademark and brand clearing house.

Name.Space, in its year 2000 application to ICANN, presented its policy and business practices that we believe are the most equitable in protecting the interests of intellectual property and brand owners, and free speech. Our business model is based not on exuberance over a particular string, but on a balanced portfolio of gTLDs that represents opportunities to create strong new brands, essential for new businesses and products, as well as for less popular community, cultural, and free expression purposes. Our model establishes an economy of scale that supports both commercially valuable gTLDs, and less-profitable gTLDs that serve smaller communities, and free expression, at a stable and affordable price point.

In the upcoming 2012 gTLD round, Name.Space will re-assert its policies and responsible business practices for the fair delegation of domain names under its gTLDs, as well as work with IP interests and ICANN to develop new methods that better serve the proactive and preemptive protections necessary for the protection of intellectual property and brands in all of the gTLDs that we own and operate.

Some of Name.Space's IP protections include:

1) Registered trademark name clearing house and preemptive famous names filter.
2) Sunrise period reserved for registered brands and intellectual property at a fixed wholesale cost.
3) Whois "lockout" that prevents registered brands from becoming available to the general public.
4) Wholesale registrar access with volume discounts to associations who serve intellectual property constituents.
5) Full cooperation with organizations such as the ANA, IPO, WIPO, INTA, MPAA, and others to develop technologies, policies, and business practices for operating our gTLDs that protect existing brands, and develop new opportunities to use gTLDs to create strong new brands, and to present owners with innovative ways to protect and serve their content online.
6) Restrictions on registering domain names for the sole purpose of resale.

Name.Space had applied for 118 of its original generic Top Level Domains (including such gTLDs as .ART, .BOOKS, .MUSIC, .NOW, .SHOP, .SPACE, .SUCKS) in the first gTLD round held by ICANN in 2000. Although our application was accepted under ICANN's rules, and selected in the top 10 picks of "strong candidates", it was not advanced toward delegation, and thus remains pending. Our year 2000 ICANN application had the support of then Chair Esther Dyson, who stated that Name.Space represents diversity, free speech, and is likely to be a successful business that supports both commerce and free expression.

Name.Space, whose business has a potential value of over 1 billion dollars, has been deprived the opportunity to fully launch and operate its portfolio of gTLD properties under what we believe is the most responsible, fair, and ethical practices yet to be employed in the commercial domain name industry. ICANN's approval of Name.Space's gTLDs will increase competition and diversity in the TLD registry space, and assure that our exemplary practices will best serve the public by providing the new gTLDs and the opportunities they present for new brands, small businesses, individual publishers and content creators, and for all owners of content libraries and new services in all media. The Internet is evolving and new gTLDs are an essential part of Internet infrastructure, and its evolution.

The 2012 ICANN round is the first opportunity for gTLD selection since 2000, and we have very patiently been waiting for this time to arrive so that our business can reach its full potential. We don't believe that our responsible and ethical approach to operating our gTLDs will harm intellectual property and brand owners, but will in fact protect them and offer new opportunities. Any further delay in launching our business will do nothing but cause further distress to my struggling business, and prevent us from creating jobs and contributing to the economy. We ask that there be no delay in the ICANN 2012 gTLD round, and that ICANN honor our year 2000 application for the portfolio of gTLDs that Name.Space originated since 1996, operated in commerce, and that we reserve our rights to. Name.Space is committed to the principles and practices stated here, and we believe that our gTLD policies are fair and exemplary, and welcome the cooperation of ICANN and the intellectual property associations to work with us in the most constructive and reasonable way so that our gTLDs become available on the global Internet without further delay.

I look forward to questions from the members of this committee, and to the beginning of a constructive dialogue with constituencies affected by the introduction of new gTLDs to the global Internet.

Sincerely,

Paul Garrin
Founder, Name.Space
http://about.namespace.org

Appendix:

Name.Space has testimony on the record from hearings held by both Senate and House Commerce Committees on the subject of Top Level Domains submitted between 1997 – 2001. Name.Space is an early advocate of the shared registry system, and an advocate of a neutral non-profit organization to oversee the framework for introducing new gTLDs to the Internet, and was a participant in the IFWP process from which ICANN emerged.

Brief history:

1996 - Name.Space launched real time domain name registry service publishing its original generic TLDs
1997 - March 11, Name.Space requested Network Solutions add our gTLD data to the global root.zone file.
1997 - March 12, Network Solutions refuses to add our gTLDs to root.zone
1997 - March 20, Name.Space files antitrust suit against Network Solutions in Federal Court, Southern District NY
1997 - September 25 House Commerce Committee hearing on Internet Domains Pt 1 (Name.Space testimony on record)
1997 - September 30 House Commerce Committee hearing on Internet Domains Pt 2 (Name.Space testimony on record)
1997 - National Science Foundation joined to lawsuit on First Amendment grounds
1998 - Commerce Dept. NTIA releases "Green Paper" (Name.Space comments on record)
1998 - Commerce Dept. NTIA releases "White Paper" (Name.Space comments on record)
1998 - Commerce Dept. NTIA IFWP process (Name.Space participates)
1998 - NTIA takes over contract between NSF and NSI, and amends it (amendment 11)
1998 - Commerce Dept. NTIA contracts Internet Corporation for Assigned Names and Numbers
1999 - NTIA creates separation of TLD "registry" (wholesale) and domain name "registrar" (retail) using shared registry system. Prices drop from $100 per 2 year registration to $30 per year.
1999 - ICANN accredits 30 companies to serve as domain name registrars (reselling .COM); Name.Space accredited
2000 - February, Second Circuit Court of Appeals decision - immunity for Network Solutions
2000 - November - Name.Space participates in ICANN gTLD round, submits 118 gTLDs, pays $50,000 application fee; is picked in top 10 strong applicants; support from chair Esther Dyson, opposed by other board members; application unresolved, still pending. *several ICANN board members recused themselves in connection with TLD applications that were selected.
2001 - February 8 House Commerce Committe ICANN hearing (Name.Space testimony on record)
2001 - February 14 Senate Commerce Committee ICANN hearing (Name.Space testimony on record)
2000 - Present - Name.Space business severely impacted by non-global access for its gTLDs, struggles to stay afloat. New investment enables us to participate in the 2012 round with our standing application from 2000.

Links to view video from ICANN's 2000 gTLD round:

Paul Garrin presents Name.Space to ICANN board, answers board's questions (Nov. 15, 2000):
http://replace.tv/vid/2000-icann1115-pg-presents.mov (approx. 8 min.)

ICANN board (sans recused members) discusses the Name.Space gTLD application:
http://replace.tv/vid/2000-icann1116-pt02-ns-discussion.mov (approx. 28 min.)

For more information, history, press highlights links, please see:
http://about.namespace.org

select press links:
http://www.nytimes.com/library/cyber/week/032297domain.html (Name.Space formerly known as PGP Media) http://timeto.freethe.net/pg/media/washpost19970706.txt
http://news.cnet.com/2100-1023-203408.html (Name.Space formerly known as PG Media)
http://timeto.freethe.net/pg/media/dot-monopoly1.jpg
http://timeto.freethe.net/pg/media/dot-monopoly2.jpg
http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2000/12/03/BU113071.DTL
http://www.thevillager.com/villager_314/thebattleofnyc.html

Attachments:

1) **Name.Space ICANN application from the 2000 gTLD round**
2) **Questions and answers from ICANN to Name.Space on the 2000 application**
3) **Name.Space business plan (2000 version as submitted to ICANN)**

Mr. WALDEN. And I now recognize the gentlelady from California, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman. And thank you to all of the witnesses today. I think this is an excellent panel.

Let me start out with my impression. I don't think this is ready for prime time. You have been at this for 6 years. And I am not suggesting that people haven't put in, obviously, a good amount of time, but it seems to me that during this time, that the opportunity with that time was to work out the differences and I think the legitimate concerns that we are hearing today. So it is ICANN, but then I think it is turning into "I can't."

So I think that the suggestion that this be delayed, and that consensus is developed by the various stakeholders, is a very reasonable one and a very important one, because I fear that if we go ahead, if you go ahead with this, this is extraordinarily costly, number one. I mean, I always look at the nonprofit world first, and it is my understanding that the application fee, Mr. Pritz, to obtain a top-level domain name is approximately $185,000—that is a lot of money for a small business, for nonprofits—with an annual cost following that of $25,000. And you stated that it is a cost-based fee.

How did you come up with this? Can you deconstruct it for me just rather quickly, because I have a whole series of questions on what the fee covers, what the money goes toward in the gTLD process. Just very quickly.

Mr. PRITZ. Yes. Certainly. So the fee covers the cost of the evaluation. The evaluation is extensive.

Ms. ESHOO. How did you come up with that? How did you evaluate the evaluation? Who is doing what that they need to be paid this kind of money, and where does it go? Is it salaries? What is it?

Mr. PRITZ. Yes. There is six different evaluations provided by independent evaluators, and we have hired multiple firms to do that. They will evaluate each application that they have, the technical and operational——

Ms. ESHOO. Did you shop it or——

Mr. PRITZ. We certainly shopped it. We did a public request for proposals, we interviewed applicants, and we negotiated fees.

So the other part of this is we want to be very careful how we delegate these TLDs. We want to delegate them only to those entities that have the financial and operational wherewithal to operate a register——

Ms. ESHOO. I understand that there is a subsidy of some—a pot of, what, $2 million? Is it 2 million?

Mr. PRITZ. The ICANN Board made—that is sort of a different issue. The ICANN Board made a $2 million set-aside as a seed fund——

Ms. ESHOO. For the whole wide world to——

Mr. PRITZ. For helping needy applicants.

Ms. ESHOO. I mean, that is a pittance. I mean, once that is used by a handful of organizations, then what happens?

Mr. PRITZ. Then there will be second rounds, and there will be——

Ms. ESHOO. Second rounds of how much and by when?

Mr. PRITZ. The second round? The second round of new TLDs will occur after ICANN has met its obligations to the NTIA, the U.S. Government, other governments and trademark holders to test the efficacy of its protections and to ensure that roots own operation remains stable.

Ms. ESHOO. What kind of mechanisms are in place to ensure that there won't be a proliferation of phishing? This has been mentioned by more than one person today and other scams in this new space.

Mr. PRITZ. We are sure at the end of the day we are creating a safer environment for——

Ms. ESHOO. How are you sure? How?

Mr. PRITZ [continuing]. And trademark owners.

Two ways. One is that the new TLDs will have trademark protections and malicious conduct mitigations, very specific tools that existing TLDs don't have.

Ms. ESHOO. You know what I am struck by? I am struck by the following, and that is that major issues are left to after you begin rather than developing the consensus before we move forward, and I think that that is really what has risen up in the testimony today. And that is what I think is really troubling.

Let me read this to you. It is from a constituent. Dear Congresswoman Anna Eshoo, you are a member of the Committee on Energy and Commerce and will be holding a hearing on ICANN's new gTLD program Wednesday, December 14th. For those of us in the IT business who are swimming in spam, please ask ICANN why the law enforcement amendments to the registrar contract have not been adopted, and why that process is not occurring with full disclosure. My personal sense is that ICANN is more interested in protecting spammers than they are in protecting the public. Regards, Lyle.

So how would you respond to Lyle?

Mr. PRITZ. Of course ICANN is not interested in protecting spammers.

Ms. ESHOO. But what are you doing——

Mr. PRITZ. ICANN is in active face-to-face negotiations with registrars to implement those 12 law enforcement recommendations into the registrar accreditation agreement. The fastest way to implement them is in this face-to-face negotiation. We publish the results of each meeting on our Web site so that the community can be kept up to date with the status of the negotiations and the implementations that are——

Ms. ESHOO. Who is negotiating, though? Who is negotiating with whom?

Mr. PRITZ. This is a bilateral agreement that ICANN has with each of the registrars that sell domain names like Go Daddy and NSI. So it is a bilateral agreement. So it is a bilateral——

Ms. ESHOO. And how many of them have been struck?

Mr. PRITZ. How many——

Ms. ESHOO. How many have been struck, bilateral agreements that you are talking about? Or is this after the fact?

Mr. PRITZ. Because there are 900 registrars, we are negotiating with a representative group of registrars so that we can reach agreement that these law enforcement protections will be implemented in all of the agreements simultaneously.

Ms. ESHOO. I have gone way over my time, and I thank the chairman for his patience. If I could just ask this, and you can answer it. If this subcommittee were to ask you to delay, what would your response be?

Mr. PRITZ. I would say that this process has not been rushed. It is 7 years in the making. It is well thought out. How do we know we are done? Every issue has been discussed. No new issues have been raised. The trademark protections that are in place were developed by experts. At the end we were debating nuances of those. The people at this table participated in that debate and helped craft those RPMs as they were made.

Ms. ESHOO. Thank you, Mr. Chairman.

Mr. WALDEN. I thank the gentlelady from California.

I now recognize the vice chairman of the Subcommittee on Communications and Technology, Mr. Terry.

Mr. TERRY. Thank you, Mr. Chairman.

And, Ms. Alexander, you look bored. Nobody is asking you questions, so I am going to step up to the plate. Last December, the Department of Commerce sent a letter to ICANN's former president Rod Beckstrom expressing concern about ICANN's apparent failure to carry out its obligations as specified in the Affirmation of Commitments. In particular the Department of Commerce was troubled that ICANN was moving forward with the gTLD expansion without having proven that the benefits of expansion outweighed the costs. It seems to be the fundamental question here today in our discussion. So what has changed since last year?

Ms. ALEXANDER. Thank you very much for the question. We did, in fact, send a letter last December, and as a result of that letter, we then worked with colleagues from around the world and the Governmental Advisory Committee and developed a scorecard of 81 different pieces of advice the government and even ICANN in this program. The Board then sat in very extensive face-to-face negotiations and deliberations with the group of governments to resolve all of these issues, and from our perspective, many, if not all, of those issues have been addressed.

I think what we are seeing here today is the fact that a multistakeholder, consensus-based process doesn't mean every stakeholder agrees or unanimity in the process. Until we actually—the program unrolls and we see effective implementation of the safeguards that have been described, there will be predictions of those that want this and those that don't.

So we are very—at this point I think we are looking for facts, and facts based on what actually happens going forward. And again, it is really key that there be effective implementation of the safeguards that the GAC was able to get through this process.

Mr. TERRY. You said in your answer that they adopted most of the recommendations. In the grouping of "not accepted," are there any of those that are of concern to you?

Ms. ALEXANDER. Not to the United States. There was a set of recommendations that the Board didn't agree to. The Board action is consistent with U.S. law. It was European colleagues that were concerned that this sets up a different set of trademarks. But what was adopted and agreed to in the Board is consistent with U.S. law, so we were happy with the response.

Mr. JAFFE. Congressman, can I just say one thing in regard to that?

Mr. TERRY. Yes, sir.

Mr. JAFFE. There is this Government Advisory Committee that works with ICANN. There were 12 issues that they had put forward to—and this was already mentioned by Mr. Pritz—as very fundamental to the protection of the registrars and registries from being infiltrated by criminal activities. Of those 12, only 3 have even been examined by ICANN, and none of them, none of them, have been actually acted upon.

I would think that those would be somewhat important things still standing out there when the Chairman of the FTC says that this proposal would be a disaster both to business and consumers, not the kind of language that he uses usually. That would be very serious. I could show you a chart that shows that there are serious holes in the protections that ICANN claims to put forward, if that would be all right with the committee.

Mr. TERRY. I would ask you to do that.

Mr. JAFFE. Can I put up the posterboard with the—I would call it the so-called Mickey Mouse posterboard.

Mr. TERRY. OK. I won't ask why.

Mr. PRITZ. Congressman, can I make a correction while the board gets put up?

Mr. TERRY. Sure. I will give you 15 seconds.

Mr. PRITZ. The Government Advisory Committee and ICANN examined 12 issues and 80 subissues regarding trademark protections and malicious conduct measures, and got to agreement on 90 percent of them. What Mr. Jaffe is talking about are the 12 coincidentally law enforcement recommendations that we are seeking to——

Mr. TERRY. OK. I appreciate that clarification.

Mr. JAFFE. And by the way, though, those discussions have been going on for a number of years now.

What you see over here is the key—one of the key aspects of protecting the Internet is actually being able to know who stands behind an IP address. This is very important for companies and consumers if they are being somehow harmed on the Internet.

What you see here is that when you actually go to existing registrars and to what is called the thicker WHOIS, which is one of the things that ICANN has particularly stressed as a protection, you find that you have people who are registered as Mickey Mouse—and this is literal—Donald Duck. If you look—I don't know if you can see it here——

Mr. TERRY. I wish I could.

Mr. JAFFE. But the addresses are clearly fraudulent. Anybody would see that immediately, and yet they have not acted on this. And this is not just—we have some examples, but they could be multiplied many times.

If you can't tell who is causing the harms on the Internet—and there is, by the way, no requirement that there be a thicker WHOIS. ICANN recommends it, but doesn't demand it. But even if they demand it, and it is not actually carried out, this creates a massive hole in their protection system. And to roll out a new supertanker with a clear hole in the hull is not something that we

would want to put much of the business and brand community, and most of the consumer community, and much of the not-for-profit community on board until it has been tested out.

This seems to me these problems should be solved first, and then we should go forward with a major rollout. And we are talking about 1,000 potential names. Mr. Pritz in the last hearing specifically went from 300 to 500, which we said was a 1,200 to 2,300 percent increase, and saying that they might even go to 1,000 names in the first——

Mr. TERRY. My time is gone. And hopefully, Mr. Pritz, someone will ask you to reply to that so we can get the point, counterpoint.

Mr. WALDEN. I now recognize the gentlelady from California, Ms. Matsui.

Ms. MATSUI. Thank you, Mr. Chairman.

And I only have 5 minutes, so if you can be as crisp as possible.

Mr. Jaffe, in your testimony you noted the proliferation of domain names that would raise costs for domain name owners for things like defensive registrations and monitoring. Can you summarize these costs briefly?

Mr. JAFFE. Yes, I can. And I will try to be brief. But it is important to understand that for our members, they often have hundreds, even thousands, of brands. So these numbers have—you first get the numbers, and then you have to figure out how it might multiply through the process. There is a $185,000 registration fee. That doesn't mean that you get the registration. That is just to get into the game. Then if you get the registration, it is $25,000 per year, and you have to keep the registration for 10 years. This basically wipes out all medium-sized and small groups.

That is not all the costs. There is diversion of Internet-using consumers to other sites, lost sales, damaged reputation, goodwill, and the cost to monitor the Internet for such abusive conduct, the cost of UDRP actions, anywhere from $5,000 to $15,000. And the list goes on and on. It is an extraordinarily expensive program for the business community.

Ms. MATSUI. Ms. Hansen, would you agree with that?

Ms. HANSEN. Definitely.

Ms. MATSUI. OK. I have a series of other questions, but I must say that I want to get to the point here of the hearing, I believe.

I really don't believe this is ready for prime time. I agree with my colleague Ms. Eshoo on this. My concern is, yes, you have got 6, 7 years they have been working on this, but there are many issues that we have been working on for 6 or 7 years that we just don't know where to go because you can be talking—every issue can be out there, every fact can be out there. But quite frankly, it is who emphasizes these issues that are really very important.

This is not at all related to what is happening here today, but we have a huge water issue in California. We have been working on that for decades, and we know about every single fact and issue there is, but we still can't get to a situation where we have the right transparency, accountability and governance. And I think this is what this is all about. You seem to believe that this has to be done, the implementation has to go forward, and you have already talked about it for years or discussed it. So therefore, 6, 7 years should be enough. We will just call it, we will go ahead with it.

I believe at the very beginning ICANN had a certain mission, and I think we have gone off track here. So what I am saying, if ICANN is—as you are saying, can't delay its implementation, would you consider a pilot project? I mean, we are looking at this right now of let us say no more than 50 total domain names to see how it works, and then see its benefits before rolling out the full program, because once it takes off, I don't know how we will deal with this.

Mr. Pritz.

Mr. PRITZ. ICANN does have a mission to increase competition and choice, It is baked into our DNA, to create competition in the Internet. It has done that since the very beginning. This committee chided ICANN in 2001 for moving too slowly on new TLDs when it made a very limited round, an introduction. The title of the hearing included "Is ICANN Thwarting Competition?" Our mission is to create competition but in a safe and stable way. And what we want to do, what I am as passionate about, or more passionate about, than people here are launching new TLDs to improve the environment for consumers and trademark holders.

Ms. MATSUI. Let me say this, Mr. Pritz. We know a lot more now about cybersquatting and all the nefarious things that can happen on the Internet. We are dealing with it every single day. I mean, let us face it, we are dealing with the Internet much more frequently than we did before.

And this is like—we are trying to do something on a worldwide basis now. I don't know where the governance of this comes in. It is a private non-profit, and it seems to have morphed into a lucrative business. And we may not have nefarious motives, but we don't know what would happen once it takes off, especially if it is international. There are countries around the world who don't have the same standards we have, and even though you might be dealing with people who are very intelligent, the governance, the accountability, the transparency is not apparent to me. And I truly believe that there is a way to delay this that would be most helpful so we can have a discussion about some of these governance things that I think are very important.

Do you have a comment on that at all, Mr. Pritz?

Mr. PRITZ. Certainly ICANN is one of the most transparent, accountable organizations there is, as has been measured by others. And I just want to talk specifically about cybersquatting.

Cybersquatting will be reduced in new TLDs, one, because there is new protections; and two is cybersquatting occurs in the great big TLDs like COM and the others. That is where it pays off. That is where malicious conduct pays off. By distributing names in more TLDs, it will serve to reduce the amount of cybersquatting. There is no incentive——

Ms. MATSUI. I see where my time is—I am sure it is gone. But I must say this right now, that our constituents are telling us they use the Internet, and they are very concerned. And, you know, I look at things at the granular level, at the ground level, and quite frankly, it has caught their attention, it has caught our attention. I think we need to look at ways to delay this.

I thank you for your patience, Mr. Chairman.

Mr. WALDEN. Thank you for your participation and good questions.

We have a letter here from Rebecca M.J. Gould, vice president of global government relations and public policy from Dell, Inc., which we would like to submit in the record. Without objection.

[The information follows:]

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December 13, 2011

Representative Greg Walden
Chairman
Energy and Commerce
Subcommittee on Communications
and Technology
2125 Rayburn House Office Building
Washington, DC 20510

Representative Anna Eshoo
Ranking Member
Energy and Commerce
Subcommittee on Communications
and Technology
2125 Rayburn House Office Building
Washington, DC 20510

Dear Chairman Walden and Ranking Member Eshoo:

Thank you for committing your and the Committee's time and resources toward exploring the implications of the International Corporation for Assigned Names and Numbers' (ICANN) generic top-level domain (gTLD) expansion plan. This proposal is of great concern to Dell and our many online customers.

As a company that transacts significant business online, Dell is already a major target of online criminals who fraudulently incorporate our trademark into domain names in attempts to steal individuals' private information, sell dangerous counterfeit products, or otherwise defraud consumers. Dell expends significant resources, in the form of litigation and defensive domain name procurement, to counter these threats to consumer welfare in the existing universe of domain names. ICANN's plan to multiply the size of that universe will both multiply the expenses required to undertake those defenses, as well as multiply the potential online threats to consumers. We believe that the inevitable result of ICANN's current plan will be erosion of consumer trust in ecommerce, along with significant new expenses on all honest companies that transact business online -- expenses that are particularly undesirable during a time when our economy needs companies to invest instead in innovation and job creation.

ICANN's multi-stakeholder process did not adequately address the concerns of stakeholders in the domain name system, and Dell believes it imperative for the US Government to now take steps to ensure that ICANN fulfills its obligations to resolve these serious issues. We respectfully request that you and your colleagues encourage the Department of Commerce to ask ICANN, under the Affirmation of Commitments Agreement, to delay implementation to fully review and work to resolve stakeholder concerns, particularly those that threaten the consumer trust that currently enables ecommerce to thrive.

Respectfully,

Rebecca MJ Gould
Vice President
Global Government Relations and Public Policy

Mr. WALDEN. Now I turn to the gentleman from Georgia, Mr. Gingrey, for 5 minutes for questions. We welcome your comments.

Mr. GINGREY. Mr. Chairman, thank you. And I really thank the witnesses. I think we have excellent witnesses on both sides of this issue.

And speaking of issue, I would like to go back to the line of questioning that my friend, the gentlelady from California, had in regard to the cost. And I want to continue along that line, Mr. Pritz. This ICANN or "I can't," but ICANN is a nonprofit—or not-for-profit organization. And you set a fee of $185,000. And, of course, I think you did describe in your dialogue with Congresswoman Eshoo, the ranking member, where some of those funds went or how you arrived at the number, the top number. But it seems to me that in a nonprofit situation you could have picked any number.

If you can afford to allow people who are in need, whatever that definition is, to get this domain for $47,000, then it seems to me that the markup—it almost sounds like a Joseph A. Banks twofer sale—that maybe the price of 185- is a little bit overpricing it.

And what is the salaries of those people like yourself and others who are top-level management of ICANN? You know, nonprofits are really bad about that; not necessarily ICANN, but a lot of nonprofits. So naturally we would be a little bit concerned about that. And maybe you could elaborate a little bit more on that.

Mr. PRITZ. Sure. I wish ICANN was bad about overpaying its staff. The 185,000—so as an operational manager, I will tell you that it is spent. And ICANN has published memos outlining where the costs will go. Most of it goes to the evaluation itself. There are six different evaluations that——

Mr. GINGREY. Let me interrupt you right there because that raises a red flag for me. Why do you have to have six different evaluations? Why not two or three?

Mr. PRITZ. Because we have been talking about protecting consumers and trademark owners, and we want to——

Mr. GINGREY. Why not 12?

Mr. PRITZ. So again, what is great about ICANN is it gets to rely on experts in Internet security and trademark protection. And we ask them what evaluations should be done on these applicants in order to ensure improved safety and security in the Internet and these—these evaluations to ensure they have the economic and operational wherewithal to run a registry? We do criminal background checks. We do background checks to ensure they are not involved in domain name misappropriations in the past. We want to make sure that domain—the top-level domain won't result in consumer confusion. And so these are most of the checks we are doing to ensure that only those that will operate the registry in a responsible way will be awarded these things, because we want to improve the environment for consumers.

Mr. GINGREY. I think you have done a pretty good job in responding to me on justification of the cost. Some of my colleagues on the other side of the dais have expressed their feeling that they don't think this is ready for prime time. I will have to admit to you I am not sure whether or not it is ready for prime time, and I guess that remains to be seen.

In the remaining minute and a half, let me move to Mr. Jaffe and ask him this question. Mr. Jaffe, within the nonprofit world, how might this expansion increase incidents of online predator crimes where, for example, the Girl Scouts or the Boy Scouts have to keep their name off either this new .xxx or something worse that we haven't seen yet? How big a problem?

Mr. JAFFE. It is an enormous problem. The Red Cross was—and the Olympics got an exemption out of this program, as did, by the way, ICANN. When the Red Cross asked for this exemption, they said it was absolutely essential that they have it, because every time there is a natural disaster, that they have people stealing, pretending to be one of their affiliates; and that if they did not have this exemption, that that would be a very serious problem.

That is the same problem that the Council of Better Business Bureaus has just discussed with you today. There was a witness in the Senate hearings last week from the YMCA representing a consortium of 38 other not-for-profits. All of them said this would be an extraordinarily serious danger for them, and that they did not feel protected, and that to have to be able to spend the kind of money that we are talking about to reserve their names was going to severely undermine their own programs.

Mr. GINGREY. Well, I have got 11 seconds left. Let me go back to Ms. Alexander and then ask again about this .xxx. What was the purpose of that, that domain name, creating it?

Ms. ALEXANDER. Thank you very much for the question. The Department was not the applicant for the domain. It is probably a better question to put to Mr. Pritz.

Mr. GINGREY. OK. Mr. Pritz.

Mr. PRITZ. The application was put in as part of the 2003 round of new TLDs where seven were implemented that were restricted to certain types of communities. Dot-xxx submitted an application and filled out the technical and operational and community information. The ICANN Board decided not to award XXX a TLD. ICANN has independent review processes, and ICANN went through that independent review process, and in arbitration it was determined that the ICANN Board didn't follow its processes properly, and the decision was made to delegate XXX. And I would say based on some of the other comments here, there is significant safeguards in XXX for users and trademark holders that some of the panelists have deemed to be effective.

Mr. GINGREY. OK. Mr. Chairman, thank you. I yield back.

Mr. WALDEN. The gentleman yields back his time.

The chair recognizes the gentlelady from the Virgin Islands, Dr. Christensen, for 5 minutes.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

Mr. Pritz, three out of four of your fellow panelists are not supportive of the January rollout. Could you tell us the names of some groups that are supportive of the January—just a few.

Mr. PRITZ. Right. So this consensus is built out of ICANN's communities. So for the group that makes the policy to initiate this program, there is counsel with representatives from intellectual property, a business constituency, Internet service providers, noncommercial groups, registries and registrars. They all represent their constituency groups and come to the policy discussions with

their viewpoints, and they work over a period of time to develop a consensus. Several multinational—not several, many multinational corporations participated in that debate. Also there is governments that Ms. Alexander described that play a very key role in developing ICANN's policy.

Mrs. CHRISTENSEN. OK. It still seems to me that details about the top-level domain expansion are still being worked out, including protections to trademark holders, as well as enforcement of various new mechanisms. You are still negotiating, for example, on the law enforcement recommendations. So I, too, have some concerns about moving forward with that January rollout while significant portions of the plans are still being worked out.

Also, there are already examples of ICANN's inability to implement internal policy. For example, ICANN is currently in arbitration with Mr. Embrescia's organization, Employ Media. The arbitration in the job space has been stalled because of ICANN's inability to meet arbitration deadlines. So how will ICANN ensure that these mistakes and delays won't happen in the gTLD expansion?

Mr. PRITZ. So there is a very detailed project plan to which ICANN is managing to ensure that the program is implemented in a timely, transparent and predictable manner. Evaluation panelists have already been retained. They are being trained. The trademark protection mechanisms, the details of those are very well settled as determined by expert groups that are determining them. And the implementation of those measures, such as the trademark clearinghouse and a rapid take-down process, are well underway, according to a timetable. Remember, we are not going to see any new TLDs until 2013 at the earliest.

Mrs. CHRISTENSEN. Do you have a plan in place to ensure that ICANN is adequately staffed to review applications and implement all parts of the gTLD program? And do you have adequate staff to execute the appeals process and avoid internal process breakdown?

Mr. PRITZ. Yes. We have—it is published on ICANN's Web site, but we have agreements with very well-known firms, both in the United States and internationally, to perform the evaluations and also perform any necessary arbitrations. We have developed processes for independent arbitration. So if there is a dispute, it goes outside ICANN, it gets settled and comes back. So the process itself is well thought out and managed.

Mrs. CHRISTENSEN. And staffed?

Mr. PRITZ. Oh, yes. And certainly staff. There is staffing plans for the next year not only in evaluating these applications, but also in increases to our compliance program, our financial staff, our staff that administers the contracts are all well planned.

Mrs. CHRISTENSEN. This question is both to you and to Ms. Alexander. To you, Mr. Pritz, what mechanisms are in place to ensure that ICANN's own procedures and rules are followed? And who will enforce those rules when the process breaks down?

And, Ms. Alexander, what role, if any, will NTIA or the Department of Commerce play in ensuring ICANN adequately implements guidelines in the procedures it has set?

Ms. ALEXANDER. Thank you very much.

So NTIA will continue to play a very active role as it does within the Governmental Advisory Committee in working with colleagues

around the world to make sure that these key safeguards are actually put into place. The other safeguard that we have is the Affirmation of Commitments that was referred to earlier, I think, by Ms. Eshoo. It actually calls for a multistakeholder review of this program a year after the first TLD is in the root, similar to what we have done with the Accountability and Transparency Review Team. We will be very actively participating in that process.

Mrs. CHRISTENSEN. What recourse will NTIA or other stakeholders have if the gTLD program is not rolled out in a satisfactory fashion?

Ms. ALEXANDER. So we believe our current safeguards in the process and through the GAC—we can actually ask for additional changes if they are needed. This will require us to work very actively and closely with stakeholders, including those at the table. We take very seriously the concerns people are raising and want to work actively with them to make sure those are taken into account and addressed going forward.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

Mr. WALDEN. The gentlelady's time has expired.

The chair now recognizes the gentleman from Florida, Mr. Stearns, chairman of the Oversight and Investigations subcommittee.

Mr. STEARNS. Thank you, Mr. Chairman. And thank you for having this hearing.

We have had hearings like this before, and I think one of the concerns a lot of us have, which I could hear when I was watching in my office, is the amount of money as a not-for-profit that you folks are going to make. Do you think you will sell 500, Mr. Pritz, 1,000 new addresses? How many do you think you will sell?

Mr. PRITZ. Sir, we are not selling them, but we are providing them and have the zero-cost fee. So the latest testaments are that we hear from the outside——

Mr. STEARNS. Of the 185,000 cost-recovery fee, how many of these do you think you will get?

Mr. PRITZ. We think—so this is hearsay. The latest estimates are over 500.

Mr. STEARNS. So you could have 1,000?

Mr. PRITZ. Yes.

Mr. STEARNS. So you think 2,000 is a fair estimate?

Mr. PRITZ. I don't think so. I think it is much less than that.

Mr. STEARNS. If you do 500, it is roughly $92-million-500.

Mr. PRITZ. Yes, I know exactly——

Mr. STEARNS. So if it is 1,000, then you will have $185 million. If you do 2,000, you will have $360 million. Is all of this money going into a surplus, or where is it going?

Mr. PRITZ. Sir, if there is—ICANN is a not-for-profit, and if there is a surplus at the end——

Mr. STEARNS. There should be a surplus at——

Mr. PRITZ [continuing]. It will be identified and segregated and put into a fund to help applicants in future rounds.

Mr. STEARNS. Do you have a surplus now?

Mr. PRITZ. We have an operating reserve fund of about 9 months' worth of operations.

Mr. STEARNS. So you have no large surplus at this point?

Mr. PRITZ. No. We have a reserve fund of 9 to 12 months of operating——

Mr. STEARNS. And how much is that?

Mr. PRITZ. It is $50 million.

Mr. STEARNS. Fifty million?

Mr. PRITZ. It is about that. I would have to consult with our CEO what it is exactly.

Mr. STEARNS. So it appears you have $50 million in surplus right now, and you are adding anywhere from $100 million to $200 million. It seems you will be overly supplied in your surplus. Wouldn't you think that? In other words, if $50 million takes you to 9 months, then if you add another $200 million, that is going to take you to 3 ½-plus years—you will be over 4 years surplus. Do you think you need that much?

Mr. PRITZ. No. And I don't think that—there is not intended to be an increase in the reserve fund based on the new gTLD, the program where the costs and fees received are segregated and handled separately.

Mr. STEARNS. Well, I think what you judge here—we just think you are charging too much money. Is it possible when you do these cost-recovery fees that you could stipulate in the contract—and you are trying to prevent Internet squatters. Couldn't you say that if the person doesn't do something with it in a certain amount of time, they will forfeit, and that way you wouldn't have to charge so much money? If the reason you are charging so much money is to discourage people that are just going to sit on the domain, why couldn't you stipulate in a contract, like they do in a franchise for Burger King and McDonald's, you have got to do X, Y, Z to your property; if you don't do it, you lose your franchise? Couldn't you do something like that and then drop the fee?

Mr. PRITZ. So——

Mr. STEARNS. Just yes or no.

Mr. PRITZ. Yes. We are intending to encourage applicants to bring new businesses and innovation. This is all about bringing innovation——

Mr. STEARNS. I mean, to bring the cost down, couldn't you stipulate in language that they have to do something in a certain amount of time, and that way you prevent squatters?

Mr. PRITZ. We do that. We have new protections that are built into the program, that are built into the new agreement that new registries have to comply with to combat squatters. So it is really a separate issue than the fee, which is really targeted at evaluating the applications. And think about——

Mr. STEARNS. Mr. Pritz, how much do you make a year? What is your salary?

Mr. PRITZ. Well, I was making $248,000 a year, and I got two 15 percent raises in the last several years.

Mr. STEARNS. How much total salary today?

Mr. PRITZ. Including bonuses, about $395,000.

Mr. STEARNS. You are making $400,000 a year. And what is the CEO making?

Mr. PRITZ. I am not sure.

Mr. STEARNS. Well, I think it is public knowledge. So you must know. What is it?

Mr. PRITZ. I think it is over $800,000.

Mr. STEARNS. Because when we testified—I was chairing a committee, and we had this testimony—anyway, it was up about that 2 or 3 years ago. Does that include all the fringe benefits, this $850,000 he makes?

Mr. PRITZ. I am not sure. I am sure that it is competitive with other similarly situated CEOs, because ICANN strives to have——

Mr. STEARNS. Well, I think in light of the fact that the salaries are pretty generous, it seems, and you are going to potentially have $200 million added to your surplus with your $50 million, you will have reserves for 3–1/2, 4 years of operating, I think you folks should take to advice here and not charge so much here.

Mr. PRITZ. And I wish we could. And we will look at the actual costs after the first round. But we have made a very good-faith attempt to identify the costs with great specificity, and our prediction is that is what it is going to cost. And we think we are right in the middle. It could be—the actual costs could be greater, or it could be less. If it is less, that money is going to go back to the Internet community in some form. It is not going to go into salaries, and it is not going to go into the ICANN reserve fund.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. WALDEN. I thank the gentleman from Florida, and I recognize the gentleman from Massachusetts, Mr. Markey, for 5.

Mr. MARKEY. Thank you, Mr. Chairman.

I believe that ICANN's proposed changes need to be closely scrutinized. And I thank the gentleman from Oregon for holding this important hearing this morning.

My concerns with ICANN's proposal to expand the amount of generic top-level domains or the words to the right of the dot in a Web site address are twofold. One, I am concerned that ICANN has not sufficiently proven that any problem exists. Is there a shortage of Web site addresses? Why does this change have to occur right now?

Two, I am also concerned that ICANN's proposal could burden both consumers and businesses. For example, the proliferation of gTLDs could hurt consumers by increasing the risk of fraud. A consumer may have problems distinguishing a legitimate Web site from a fake one. As a result, a consumer may disclose her personal or her financial information to an imposter posing as a legitimate business.

Before making a sweeping change to the Internet, we must ask who really stands to benefit from the change. Any proposal that would fundamentally alter the Internet must first ensure that consumers and businesses alike are protected.

Mr. Jaffe, if this proposal were implemented, and analysis then demonstrates that the costs of the new gTLD program exceed the benefits, isn't it true that the damage from the new gTLDs would already have taken place, and that there is no provision to undo these decisions once the damage has been done?

Mr. JAFFE. That is absolutely correct. And this is why we think it is particularly premature to do this kind of a rollout. Just last week there was a letter written to the Department of Commerce by Robert Hall, who is the Robert and Carole McNeil joint professor of economics at Stanford University, the senior fellow at

Stanford's Hoover Institution. He served as president of the American Economic Association for the year 2010. Speaking about the cost-benefit issues, he said, our analysis today shows that an unlimited expansion of gTLDs would not add anything material to the product variety facing Internet users. It would merely create a costly nuisance for those users. ICANN is sponsoring a perversion of the economic analysis that a commission—by even suggesting that this nuisance has net benefits for the Internet community. We therefore urge you to take action to block the unlimited expansion of gTLDs unless it is satisfactorily and transparently demonstrated that any such expansion or a limited expansion on a case-by-case basis would be in the public——

Mr. MARKEY. What would the impact be on ICANN's credibility with the public and with governments?

Mr. JAFFE. Well, we think there is going to be an enormous—despite what has been said at this hearing, an enormous further proliferation of cybersquatting, phishing because they have not been able to control the 22 top-level domains. And so why do you think that they can control 300, 500, 1,000 more domains?

And understand something that is very important to understand in this process. The top-level domains, which will be going up enormously, proliferate everything to the left side of the dot, the secondary domains. Right now with 22 top-level domains, there is more than 100 million secondary domains. Just think what will happen here. In the XXX area, almost every college and university in this country felt it was necessary, to protect their good name, to buy a name on the XXX area.

Mr. MARKEY. Let me ask Mr. Bourne a quick question if I may.

In your testimony, you emphasize that ICANN should change its proposal to make it less harmful to consumers. As you know, the Federal Trade Commission Chairman Jon Leibowitz has called ICANN's proposal, quote, "a disaster for consumers." In your view, what risks does the current ICANN proposal pose to consumers?

Mr. BOURNE. Thank you for your question, Congressman. My estimate today is that maybe there will be 800 applications, right, for new gTLDs. Probably two-thirds to three-quarters are coming from brands. So that number is artificially high because brand owners are unsure when this could be available to them again. So ICANN in a way has created a condition of scarcity there. So by illuminating when the next round could be, maybe fewer applicants will apply. Right? So lowering the stack, reducing it.

Furthermore, this point about cybersquatting, consumer harm, it is bad out there today, right? The existing space is a mess. Will the new space be worse? Maybe. It will be bigger, that is for sure. There are things that we can do, that ICANN can do, that all the different stakeholders in this can do to affect cybercrime, and the most important thing to do is to establish a deterrent. These people are undeterred. The 1999 ACPA has basically done nothing. Cybersquatting has increased dramatically since it was introduced. So that is something that we can do to fix this space. And God forbid this space gets much bigger, it will affect that space positively as well.

Mr. MARKEY. Mr. Chairman, thank you very much. And I think this is a very important hearing. Thank you.

Mr. WALDEN. We do as well. Thank you for your participation and your questions.

We will now go to Mr. Shimkus from Illinois for 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman. I appreciate the panel being here today.

I would like to first turn to Mr. Bourne. And you suggested that a second round of general top-level domain applications would alleviate some of the concerns with the problems. And I would like to put it in this perspective, if I understand the testimony. We deal a lot with spectrum here, and if you know spectrum, it is really a finite entity. We know what has been sold. We know what has been auctioned. We know what is available. It does provide some certainty to people who are then going to eventually get into the market and bid for a slice of it because they know what is out there.

The concern with what ICANN is doing is we may not know what the top and the level is of what is out there, and I think your testimony tried to address that. Am I right?

Mr. BOURNE. It did. It did. I talk to hundreds of businesses and have talked to hundreds of global enterprises since this policy was initiated back in June. We even hosted an event in New York City called "What is At Stake: The Reality of the New GTLD Program for Brands." Eighty-five participants were there discussing the way they felt about this policy. And there was a great deal of anxiety. In fact, I would say that 80, 90 percent of the companies I know who are applying for a gTLD are doing so mainly to gain rights to an option of hypothetical future value mainly because they don't know if they will have another shot at it.

So coming out of this event on November 1st where the founding chairman of ICANN, Ms. Esther Dyson, was our keynote speaker, we sent a letter to ICANN asking them just to shine some light. And the answer could be in 3 years, it could be in 4 years, it could be in 5 years. Whatever it is right now, we don't know if there will ever be another program.

So I mentioned this to Congressman Markey. I will say it again. Intentionally or unintentionally, ICANN has created a condition of scarcity around these gTLDs, and that should be alleviated before this moves forward so that companies can make a realistic decision if this thing proceeds: Can I afford to wait this out? Do I want to sideline, or do I want to be a pioneer?

Mr. SHIMKUS. Ms. Hansen, I saw you kind of agree. Do you want to weigh in on this?

Ms. HANSEN. Yes, definitely. I think your points are very good. And we also considered whether or not we should get a .bbb. I think everyone has been undergoing that analysis.

Mr. SHIMKUS. And that would be just to protect your brand name, not knowing what future offers, if ever, will be on the table?

Ms. HANSEN. Exactly. We don't want somebody else to get that, because our brand is so well-known, and it has been used and abused relentlessly already on the Internet. We would rather have it and not let it get in the hands of someone else.

Mr. SHIMKUS. Mr. Pritz, how do you respond to these two concerns?

Mr. PRITZ. Well, that we take the concerns very seriously. There is over 50 trademarks that are registered for BBB. And so what is

required to be put in place is a set of rules that protect each of those trademark holders to allow them to object if anybody were to attempt to register BBB that would infringe their interests.

Mr. SHIMKUS. Let us segue right into that. This whole debate on string confusion, I mean, I am kind of now moving, but I do have you. How do you keep proprietary trademark data when someone could, in the purchasing of a gTLD, marry together a name that could break copyright identification? Why does ICANN permit this as an objection to the TLD, yet still allow a registry to reserve domain names for auction that are confusingly similar or identical to trademarks; in other words, take a Google and then place in an additional G? Why do you let them reserve that?

Mr. PRITZ. Each registry develops its own rules. So if somebody applies for a trademark name, that trademark holder can object to that application for a new gTLD. At the second level, there is a set of protections that have been put in place by trademark experts to allow trademark owners to have first dibs at buying a name; to put a registrant on notice that they are registering a trademark name; or, if they are abusing a trademark after the fact, take it down in a rapid, inexpensive way. So the protections for trademark holders are based on existing protections. We don't make stuff up. And then——

Mr. SHIMKUS. My time has expired. I think we are raising some great questions of concern. And since my time has expired, I am just going to throw this out. No one needs to answer. Law enforcement has concerns on the WHOIS type of information. Obviously we don't want criminal elements that now have activity—I am not sure what legislative action we can do in the oversight hearing. This hearing is very, very important. Mr. Chairman, I would request that we continue our discussions on this and what we may or may not be able to do. And I yield back my time.

Mr. WALDEN. I appreciate that. And we will continue the discussions.

Let us go now to the gentleman from Texas, Mr. Barton, for 5 minutes.

Mr. BARTON. No thanks.

Mr. WALDEN. He does not have questions.

Mr. Scalise from Louisiana, you are on for 5.

Mr. SCALISE. Thank you, Mr. Chairman. I appreciate you holding this hearing.

There are a lot of questions as we look at this, and I guess I will start with Mr. Pritz. You all are rolling this out starting in January. So you have a 3-month period where you would take applications for various top-level domain names. And then at that point do you have a process, a timeline, for when you will start authorizing it at some point? You have got 50 applicants or whatever the number is going to be. When do you actually start issuing those TLDs?

Mr. PRITZ. The evaluation process and then the ensuing negotiations are expected to take place over about 9 months. So the first TLDs, the first new registries would be operational in early 2013.

Mr. SCALISE. OK. Was there any consideration of doing some kind of pilot program first? Since this is a kind of new area, a lot of questions, whether it is companies that are concerned about

copyright issues or just the complications that already exist with existing TLDs just get carried over and then maybe exponentially expanded. Was there the thought of doing that before, just kind of opening it wide up?

Mr. PRITZ. Yes. We conducted two pilot programs in the past, one in 2000 and one in 2004.

Mr. SCALISE. With what?

Mr. PRITZ. In the 2000 round, new TLDs such as .business and .info and .museum were introduced. In 2004, we had—that round, we had the introduction of .jobs, Mr. Embrescia's TLD, .UPU, for the university——

Mr. SCALISE. Were there any things learned from previous problems? Because, I mean, some of the same problems we heard today we heard back in 2000. Were any of those problems worked out if this was a so-called pilot program?

Mr. PRITZ. Right. Plenty of problems were identified and addressed in this program. One had to do with how to limit the round. And so this isn't ICANN, me talking, this is—the greater Internet community discussed this issue in great depth and decided not to limit the round by type of TLD or numbers of TLD where ICANN would determine winners and losers in the program and put itself in the same position where this committee was fairly critical of it in 2001, but rather to limit the program first by an open and closed application window, and then by setting a high bar to determine only those who implement protections and have the wherewithal to operate a registry in a responsible way and can be monitored.

Mr. SCALISE. I am going to jump in. Mr. Jaffe, I saw you kind of shaking your head. I don't know if you wanted to comment on——

Mr. JAFFE. I would, because what certainly has not happened—and we have heard in this hearing several times that they have put in a whole series of new types of protections because they felt that the existing protections were inadequate. They have certainly not tested that out. And I would like to show you how—if you would be willing to allow me to put a couple more posters up just to see——

Mr. SCALISE. If we can do it in about 40 seconds or so.

Mr. JAFFE. Put up the poster for the subcommittee members who have sites. I will try and do this very quickly. And we could obviously have—and this was certainly true for Senators. It is also true for the President of the United States. If you could then put up the posterboard for the chick.xxx. This is just one site. You hear about some of these numbers I have been talking about. Here they are talking about selling this for $5 million. The numbers that we were talking about are actually low.

If you could put up the security warnings for the FederalTradeCommission.org.

What happens here is that if you come to thinking that you are going to the Federal Trade Commission, you will be spammed, and that this—it looks like it is a safe site, but it, in fact, would allow you to have your keystrokes taken.

So there is a tremendous danger already. Why would we think that with these dangers that are already out there, why would we do 1,000 more?

Mr. SCALISE. I have time limitations because these are some of the problems that I was referring to that have been around well before 2000. I know when we dealt with this when I was in the State legislature, the issue of cybersquatting on, for example, high school athletes or even a college athlete, by the time you are maybe a senior in high school, if you are a blue-chip recruit, somebody bought your name, they took it, it is gone. So if you are fortunate enough to make it into the NFL or the NBA or Major League Baseball, somebody else owned your name. I don't even think that problem has been resolved.

So the final two questions as my time is expiring are, number one, Mr. Pritz, how are you all already dealing with that serious problem? And then what happens, then, if you somehow create an authorized .athlete, for example, and then somebody goes out and now all of those athletes are—somebody is going to buy their name and squat on their name? Do you have any mechanism—if a name is—a new top-level domain name is issued, and then you find problems with it, is there a method you have in place to pull that back in your plan that you have already drawn up? So if you could answer those two questions.

Mr. PRITZ. One reason for that problem today is scarcity, that all of the .com names are gone, every English word is registered there. How do we address the needs of—there is 2 billion Internet users. How do we address the needs of the next billion——

Mr. SCALISE. No, no. If there is a John Smith, and if another John Smith gets it, first come, first serve. But if Bob Dole goes and gets John Smith's name because he wants to take advantage of that person, that still exists today. I haven't seen you all come up with any mechanism to resolve those blatant disputes, and there are too many examples of them.

Mr. PRITZ. That is right. And the new TLDs have to comply with a set of protections that will exist for them that don't exist now. So if your rights are being infringed, you can register a complaint, you can register an objection to have that name taken down in a rapid style. But think about the architecture of the domain name system and the ability to make those registrations more diverse so it is not so important to have a registration in that TLD.

Mr. SCALISE. Is there a mechanism to pull one back if you do find there are real problems as you issue a new TLD?

Mr. PRITZ. Yep. There is mechanisms against TLD owners called the post-delegation dispute resolution process where claims can be made to take TLDs down. And there is dispute resolution procedures on second-level names, too, where if a name is registered that is infringing your rights, you can take it down in a rapid, cheap style.

Mr. SCALISE. Thank you, Mr. Chairman. I yield back.

Mr. WALDEN. I thank the gentleman for his questions and the panel for their answers. We have a letter from the National Restaurant Association that we will enter into the record. Without objection.

[The information follows:]

REPRESENTING THE RESTAURANT INDUSTRY
The Cornerstone of the Economy, Career Opportunities and Community Involvement

Statement for the Record

For The Hearing on

ICANN's Expansion of Top-Level Domains

Before

Subcommittee on Communications and Technology
Committee on Energy & Commerce

Wednesday, December 14, 2011

The National Restaurant Association appreciates the opportunity to register the U.S. restaurant industry's strong opposition to the January 2012 roll-out of the new generic top-level domain (gTLD) program approved by the Internet Corporation for Assigned Names and Numbers (ICANN) in June 2011.

The Association is the leading business association for the restaurant and foodservice industry. Our industry is comprised of 960,000 restaurant and foodservice locations. These nearly 1 million restaurant locations serve more than 130 million Americans every day. Our members include multi-state, multi-unit restaurant brands with thousands of locations worldwide and small independent businesses with a single location.

The restaurant industry plays a significant role in our nation's economy. Restaurants will generate an estimated $604 billion in sales this year, with an overall economic impact of more than $1.7 trillion. The restaurant industry is one of the nation's largest private-sector job creators, employing about 12.8 million people, representing nearly 10 percent of the U.S. workforce.

The Association joins more than 100 other major business associations and companies in the Coalition for Responsible Internet Domain Oversight (CRIDO) in urging the Department of Commerce to stop or delay ICANN's new gTLD program. We were part of CRIDO's petition to U.S. Department of Commerce Secretary John Bryson in November urging the Department to work with ICANN on delaying and reconsidering the program.

We believe ICANN's gTLD program would impose billions of dollars in unnecessary costs on the restaurant industry at a time when restaurant operators are looking forward to investing in their businesses and hiring employees after the worst recession in decades. Profit margins in restaurants are notoriously slim, with restaurants averaging about 4 percent in pre-tax profits on every dollar in sales. The ICANN program will divert scarce restaurant resources away from job-creating, business-building activities. These are dollars far better spent reinvesting in our businesses.

If ICANN proceeds as planned, the organization will start accepting applications next month for hundreds and ultimately thousands of new top-level domains. Restaurants of all sizes will be forced to apply for new domains to protect their brands and trademarks. Costs include a $185,000 application fee for each new top-level domain. Restaurants and other companies also likely would be forced to register numerous second-level domains -- the words to the left of the "dot" in Internet addresses -- within the new top-level domains. Costs would be driven higher by legal, marketing and other costs. Some businesses have put the cost of registering a single top-level domain at $2 million or more over the initial 10-year contract as companies submit applications, watch and defend their domains, monitor for infringement and litigate to block abuse. Costs could run higher if businesses are forced to buy their own Internet names in auctions.

The Internet is increasingly central to restaurateurs' efforts to attract guests and grow their businesses. This is true for both major restaurant brands and independent restaurants. Association research shows that Americans increasingly go online for information about restaurant menus, specials, nutrition facts and more. Restaurants rely on the Internet to reach guests. Our members

would have little choice but to apply for domain names for both commercial and defensive reasons. For our largest restaurant-member brands, the price tag is exorbitant. For the hundreds of thousands of smaller restaurant operators who depend on the Internet to communicate with guests, the costs and confusion could be insurmountable.

Even beyond the financial toll the gTLD program will exact on millions of U.S. businesses, the Association believes that ICANN's program will confuse consumers by spreading Internet searches across hundreds or even thousands of new top-level domains. As confusion grows, each domain name becomes less valuable. This could undermine consumer trust in the system and make it harder for the Internet to serve as the efficient conduit for business activity that it does today.

The U.S. government has delegated powers to ICANN to govern the domain-name process. ICANN is responsible for ensuring its actions further the public interest and promote consumer trust. ICANN says it has built consensus on its recommendations; indeed, its contract with the Department of Commerce requires this consensus. Yet the Association believes ICANN has failed to justify the need for the potentially explosive expansion in top-level domains or to get consensus from the millions of business stakeholders who will be affected by the program.

Finally, we believe ICANN has taken only minimal steps to educate and inform the business community and consumers about the new top-level domain process. If ICANN proceeds with the January roll-out of its gTLD program, businesses and non-profit organizations will be immediately affected. Yet even given the reaction of the business and non-profit communities to the ICANN program, there has been little education and information to help businesses and consumers understand the scope of what is about to happen. Millions of American business owners know nothing about the gTLD expansion. Information has filtered out slowly and sporadically since ICANN approved the program in June, leaving businesses and consumers in the dark about one of the biggest shake-ups in Internet marketing in decades.

The Association asks Congress and the Commerce Department to urge a reassessment of the gTLD program before its planned roll-out in January. We thank the Subommittee for holding this hearing to air the serious concerns of America's business community with ICANN's domain name expansion program.

Mr. WALDEN. The ranking member and I wondered, Mr. Jaffe, if only esteemed Members, if there—this just being we covered ourselves better than our colleagues.

Mr. JAFFE. It is open to all comers.

Mr. WALDEN. Hopefully we are protected.

Ms. ESHOO. Esteemed and——

Mr. WALDEN. Then I am going to recognize the gentlelady from California for another letter and comment.

Ms. ESHOO. Yes, thank you, Mr. Chairman. I would like to place into the record a letter that was received yesterday to ICANN, the United Nations, the International Monetary Fund and 26 other international organizations, which raise concerns about cybersquatting under ICANN's planned expansion of top-level domain names.

Mr. WALDEN. Without objection, it will be entered into the record.

[The information follows:]

OPEN LETTER FROM INTERGOVERNMENTAL ORGANIZATIONS ON THE EXPANSION OF GENERIC TOP LEVEL DOMAINS

Mr. Rod Beckstrom, CEO and President
Mr. Steve Crocker, Chairman, Board of Directors
Mr. Kurt Pritz, Senior Vice President
Internet Corporation for Assigned Names and Numbers (ICANN)
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601
United States of America

By email: rod.beckstrom@icann.org;
steve@shinkuro.com;
kurt.pritz@icann.org

cc: Governmental Advisory Committee: gac@gac.icann.org; heather.dryden@ic.gc.ca
ICANN Legal Counsel: jeffrey@icann.org; amy.stathos@icann.org

Re: Protection Against the Misleading Use of the Names and Acronyms of International Intergovernmental Organizations in the Domain Name System

We, the Legal Counsels of the public international intergovernmental organizations (IGOs) indicated hereunder are writing to convey to you the concerns of the IGO community. The IGO community concerns relate to the increased potential for the misleading registration and use of IGO names and acronyms in the domain name system under ICANN's significant expansion plans.

Against this background, we formally request ICANN to make provision for a targeted exclusion of third party registrations of the names and acronyms of IGOs both at the top and second level, at least during ICANN's first application round and until further appropriate policy could be developed. We request for these changes to be communicated to the Internet community and included in an updated version of the Applicant Guidebook before January 12, 2012.

As you would be aware, IGOs represent a wide range of vital causes such as public health, labor practices, food security, peace-keeping operations, containment of weapons proliferation, sustainable economic and social development and reconstruction, trade and commerce standards, children's rights, refugees, disaster relief, fundamental scientific research and other public policies. Abusive registration of IGO names and acronyms harms these causes. It also imposes a serious enforcement burden on IGOs, which should not have to divert their public resources for this purpose. We believe it to be incumbent on ICANN as the mandating agency of the domain name system to implement appropriate policy measures to help mitigate these harms. IGOs are created by treaty, they are the subject of international law like states, and they deserve the same treatment.

Such measures would also find support in international legal norms. The names and acronyms of IGOs are protected within the scope of Article 6ter of the Paris Convention for the Protection of Industrial Property (with 173 Contracting Parties), as further referred to in Article 16 of the

Trademark Law Treaty and Article 2 of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights. We also note that the "GAC Principles Regarding New gTLDs" of ICANN's Governmental Advisory Committee call on ICANN to make proper allowance for IGO protection in the domain name system.

The curative, resource-intensive objection option currently foreseen for IGOs in ICANN's Applicant Guidebook fails to do justice to the above public policy and legal considerations. Consistent with the rationale for protection envisaged for the important causes represented by the International Federation of Red Cross and Red Crescent Societies and the International Olympic Committee, at minimum, provision should be made to exclude registration by third parties of protected IGO names and acronyms at the top level during the initial application round. In addition, we call upon ICANN to implement such a preemptive mechanism for IGOs at the second level.

Whether involving peacekeeping operations around the world, health, education, reconstruction, sustainable development, emergency relief, research or fundraising, the integrity of IGO identities on the Internet serves internationally-recognized causes for a global population. Going forward, ICANN's development of the domain name system must demonstrate a capacity for serving that public interest within existing legal norms.

Thank you for your attention to this matter.

List of signatories (alphabetical order by Organization):

Kalidou Gadio
General Counsel
African Development Bank (AfDB)

Akbar Khan
Director, Legal and Constitutional Affairs Division
Commonwealth Secretariat

Emmanuel Maurice
General Counsel
European Bank of Reconstruction and Development (EBRD)

Laura Comendador Frutos
Head of the Legal Service
European Organization for Astronomical Research in the Southern Hemisphere (ESO)

Eva-Maria Groniger-Voss
Legal Counsel
European Organization for Nuclear Research (CERN)

Marco Ferrazzani,
Legal Counsel and Head of the Legal Department
European Space Agency (ESA)

John Scott
General Counsel a.i.
Inter-American Development Bank (IADB)

Peri Johnson
Director of the Office of Legal Affairs
International Atomic Energy Agency (IAEA)

Rutsel S.J. Martha
General Counsel
International Fund for Agricultural Development (IFAD)

Luc Derepas
Legal Adviser
International Labour Organization (ILO)

Rosalie Balkin
Director of Legal Affairs and External Relations
International Maritime Organization (IMO)

Sean Hagan
General Counsel and Director of the Legal Department
International Monetary Fund (IMF)

Johan Rautenbach
Legal Counsel
International Organization for Migration (IOM)

Arnaud Guillot
Legal Adviser
Head, Legal Affairs Unit
International Telecommunication Union (ITU)

Heikki Cantell, General Counsel
Christina Stenvall-Kekkonen, Chief Counsel
Nordic Investment Bank (NIB)

Peter Olson
Legal Adviser
North Atlantic Treaty Organization (NATO)

Nicola Bonucci
Director for Legal Affairs
Organisation for Economic Co-operation and Development (OECD)

Santiago Oñate
Legal Adviser
Organisation for the Prohibition of Chemical Weapons (OPCW)

Patricia O'Brien
Under-Secretary-General for Legal Affairs and Legal Counsel
United Nations (UN)

Maria Vicien-Milburn
General Counsel
United Nations Educational, Scientific and Cultural Organization (UNESCO)

Behrouz Moradi
Legal Adviser
Director, Office of Legal Affairs
United Nations Industrial Development Organization (UNIDO)

Odile Meylan Bracchi
Director Legal Affairs, Ethics Officer
Universal Postal Union (UPU)

Anne-Marie Leroy
Senior Vice President and Group General Counsel
World Bank Group (WB)

Gian Luca Burci
Legal Counsel
World Health Organisation (WHO)

Edward K. Kwakwa
Legal Counsel
World Intellectual Property Organization (WIPO)

Brigitta Exterkate
Legal Counsel
World Meteorological Organization (WMO)

Alain Pellet
Legal Adviser
World Tourism Organization (UNWTO)

Yves Renouf
Legal Counsel
World Trade Organization (WTO)

Mr. WALDEN. I want to thank all of our participants today for your testimony, your work, and your comments and your counsel. We will continue to pursue this issue in the weeks and months ahead and review the cybersquatting legislation, I think, as well and other issues attendant to this. So thank you for your participation.

This subcommittee stands adjourned.

[Whereupon, at 10:54 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration
Washington, D.C. 20230

FEB 23 2012

The Honorable Greg Walden
Chairman
Subcommittee on Communication and Technology
Committee on Energy and Commerce
House of Representatives
Washington, DC 20515

Dear Chairman Walden:

Thank you for the opportunity to testify on December 14, 2011, before the House Committee on Energy and Commerce Subcommittee on Communication and Technology at the hearing entitled "ICANN's Top-Level Domain Name Program." I appreciate your forwarding additional questions for the record to me on January 5, 2012.

My responses to the questions are enclosed. If you or your staff have any additional questions, please do not hesitate to contact me or James Wasilewski, NTIA's Director of Congressional Affairs, at (202) 482-1551.

Sincerely,

Fiona M. Alexander

Fiona Alexander
Associate Administrator
Office of International Affairs

Enclosure

The Honorable Henry A. Waxman:

1. **Mr. Pritz of ICANN recently testified that the Registry Accreditation Agreement is currently being negotiated bilaterally between ICANN and its accredited registrars. Do you believe these negotiations comply with the multi-stakeholder, bottom-up, consensus-based model called for under the Affirmation of Commitments (AoC)?**

   The contracts between ICANN and individual registry operators and accredited registrars are directly negotiated as agreements between the parties involved; however the provisions are posted for public comment before final adoption. This ensures that all interested parties are aware of the terms of each agreement and able to provide views prior to finalization. The current negotiations, started in response to an ICANN Board resolution, adopted on October 28, 2011, to advance action on the law enforcement recommendations that have been endorsed by ICANN's Governmental Advisory Committee (GAC). The issues being considered as part of the current negotiations are a product of discussions within the ICANN multistakeholder process. Periodic updates to the Registrar Accreditation Agreement (RAA), including current negotiations, have been informed through discussion within the GNSO, the GAC, and public comments submitted by interested stakeholders to identify the evolving roles and responsibilities of registrars. The current negotiations are intended to address lingering concerns from law enforcement that the 2009 RAA did not adequately address. As the United States government representative to the GAC, the National Telecommunications and Information Administration (NTIA) is closely monitoring these negotiations and will coordinate the U.S. Government's comments on the proposed amendments to the RAA that are developed as a result of these negotiations.

2. **I understand that NTIA has previously suggested that ICANN implement a process in which prospective TLD operators would compete for the privilege of operating a particular new TLD by offering terms that benefit consumers. Please describe the process by which ICANN considered then rejected NTIA's recommendation? Do you now support ICANN's more cost-driven approach to awarding new gTLDs to registry operators?**

   NTIA offered the suggestion and it was considered in the course of the six year, bottom-up, multistakeholder deliberations on the implementation of the new gTLD program. NTIA has consistently advanced the goal of ensuring that the benefits to consumers of the introduction of new gTLDs should not be outweighed by any costs, and its views have been supported by counterparts in the GAC. The GAC's "Scorecard" of outstanding issues that formed the basis for a series of constructive exchanges between the GAC and the ICANN Board in early 2011 included a recommendation that new gTLD applicants specifically outline the expected benefits to consumers of their application, which was accepted by the ICANN Board, and is now required of all applicants.

3. **ICANN has testified that it is currently engaged in bilateral negotiation with registrars concerning the twelve Law Enforcement Due Diligence**

Recommendations. While such negotiations may not be directly related to the rollout of new gTLDs, is NTIA concerned about the lack of public participation in such deliberations? Do you see such bilateral discussion as contravening the mandate set forth in the AoC?

See response to Question 1.

4. **Please generally describe NTIA's involvement in improving WHOIS. Please explain why NTIA believes the "thick" WHOIS requirement for new gTLDs will substantially improve and address inadequacies with the current system.**

NTIA has been a longstanding advocate of improvements to the accuracy and accessibility of WHOIS data. The ability of law enforcement, intellectual property interests and consumers to readily identify the contact details of entities online, particularly those engaged in fraudulent or criminal activity, is critical to the success of investigations into the abuse and misuse of the domain name system. The requirement that all new gTLD registry operators provide "thick" WHOIS data should facilitate queries by law enforcement as well as copyright and trademark owners because registrant data will be more readily accessible in one standardized source.

In addition, the WHOIS Review Team, one of four established in the Affirmation of Commitments, published its report for public comment on December 5, 2011. The group's recommendations suggest, among others, that WHOIS be made a strategic organizational priority, improve accuracy in the first year by 50% to start, develop clear and enforceable privacy and proxy registration policies, and develop clear policy to address issues related to WHOIS data for internationalized domain names. NTIA has provided input via the GAC and looks forward to evaluating the group's final recommendations.

5. **As you've testified before, the role of the Department of Commerce is not to substitute its judgment for ICANN's. Nevertheless, the United States has always had a unique relationship with ICANN. Through what tools and mechanisms could the NTIA still engage ICANN and make it responsive to the U.S. Government and other U.S.-based interests?**

NTIA will continue to collaborate with U.S. agencies and other interested stakeholders as the new gTLD program unfolds to mitigate any unintended consequences. Within ICANN, the GAC provides governments with a meaningful opportunity to participate in the development of policies related to the DNS. NTIA represents the U.S. Government in the GAC and will continue to collaborate with its GAC counterparts in actively monitoring and participating in discussions related to the expansions of new gTLDs.

For example, in NTIA's recent discussions with stakeholders, it has become clear that many organizations, particularly trademark owners, believe they need to file defensive applications at the top level. It appears that this possibility might not have been fully appreciated during the multistakeholder process on the belief that the cost and difficulty of

operating a top-level registry would constrain companies from filing defensive registrations. NTIA believes that it would not be healthy for the expansion program if a large number of companies file defensive top-level applications when they have no interest in operating a registry. Accordingly, NTIA suggested in a January 3, 2012, letter to ICANN that it consider taking measures to mitigate against this possibility.

In addition, NTIA's letter cited an immediate need to improve communication with stakeholders and potential new gTLD applicants prior to the launch of the program. NTIA also advocated that following the application period, ICANN use the data that will then be available to examine the potential scope of the program and consider if there is a need for a phased implementation of new gTLDs. Using that data, ICANN can also explore the possibility of implementing additional protections by new TLD operators at the second-level. In addition to addressing these program-specific concerns, NTIA also reiterated the importance of implementing a stronger registrar accreditation agreement; improving current WHOIS policy; and dedicating resources to fully staff and equip the contract compliance department, including creating a centralized and automated complaint process. A copy of the January 3, 2012, letter to ICANN is enclosed.

ICANN has now taken steps to enhance its outreach in the United States, including holding an information session on January 11, 2012, in Washington, D.C. In addition, NTIA was encouraged by ICANN's January 11, 2012, written response in which ICANN commits to review possible improvements to the program, specifically to deal with the perceived need for defensive registrations at the top-level, as well as to complete a series of work streams that will facilitate more effective tools for law enforcement and consumer protection. As is necessary in a multistakeholder process, all of these efforts will require active engagement by all parties prior to adoption.

6. **As you are aware, the Federal Trade Commission (FTC) sent a letter to ICANN urging that the organization undertake several outstanding reforms as proposed by the FTC. Please generally describe how NTIA has worked with FTC as part of its participation in the GAC.**

In developing U.S. Government positions for the GAC, NTIA coordinates with all interested federal agencies, including the FTC, through a monthly DNS issues interagency group. This was the case with respect to the new gTLD program where U.S. Government recommendations related to consumer protection and law enforcement were based on input from the FTC and other agencies such as the Federal Bureau of Investigation (FBI), the Food and Drug Administration (FDA), and the Drug Enforcement Administration (DEA). All of the U.S. Government's submissions to the GAC on these issues were endorsed and formally included in the GAC Scorecard, NTIA served as the GAC lead on these issues during the exchanges between the GAC and the ICANN Board, and the ICANN Board responded positively to all of the GAC recommendations on this topic.

The Honorable Bob Latta:

1. **What types of protections are in place for consumers?**

   The ICANN Board accepted a significant number of recommendations in the GAC Scorecard specifically related to consumer protection, including, among others: a requirement that new gTLD registry operators maintain an "abuse point of contact" that is required to respond in a timely manner to a request from any government agency that is conducting a lawful investigation or official proceeding inquiring into a violation of or failure to comply with any criminal or civil statue or any regulation; expanding the scope of background screening of new gTLD applicants to include a broad range of criminal conduct; the disclosure of the identity of individuals names in each new gTLD application; disclosure whether a new gTLD applicant is offering augmented security capabilities to mitigate malicious or abusive behavior; and ensuring that ICANN's contract compliance function is sufficiently enhanced to effectively enforce registry and registrar contracts.

2. **Was there any examination into whether expanding the number of top level domains would lead to an increase in cybersquatting or typosquatting?**

   There are a number of new rights protection mechanisms in the new gTLD program that are intended to minimize the incidence of, as well as provide tools to mitigate, cybersquatting and/or typosquatting. These include a Trademark Clearinghouse that will serve as a single database of authenticated registered trademarks which all new gTLD registry operators are required to use; a Uniform Rapid Suspension System that will provide relief to trademark holders for the most clear-cut cases of infringement and offer cheaper, faster responses than the existing Uniform Domain Name Dispute Resolution Policy; and a Post-Delegation Dispute Resolution Procedure that is intended to address a registry operator's bad faith intent to profit from systemic registration of infringing domain names.

3. **What types of protections are in place to prevent identity theft, spamming, sites with malicious software or anything that in any way affects the cyber security of American consumers?**

   There are up-front protections embedded in the new gTLD applicant evaluation process proposed by the GAC and endorsed by the ICANN Board that are intended to minimize the potential that a criminal enterprise or an entity either investigated for or charged with criminal activity could become a new gTLD registry operator. For example, once an applicant has passed the screening or vetting process, each registry operator is obligated to implement specific security procedures, such as the implementation of the DNS Security Extension (DNSSEC), which is intended to protect the integrity of DNS data and to mitigate attacks such as cache poisoning and other data modification threats.

   There are a number of new tools that have been incorporated into the new gTLD program in order to mitigate fraud and abuse. As listed in response to Question 1, the ICANN

Board accepted a significant number of recommendations in the GAC Scorecard specifically related to consumer protection.

4. **Some witnesses are testifying that cyber security threats could arise as a result of the ICANN proposal, and that consumers could be exposed to spyware/malware, counterfeiting of products, identity theft or spamming. Will the Department be working with ICANN to address those concerns?**

NTIA has, through our engagement through the GAC, consistently advanced the need to ensure that any harms to consumers are mitigated and resolved effectively, either through actions by the registry operator or through contractual provisions in ICANN's agreements with registrars. The ICANN Board has adopted several proposals made by the GAC to ensure that new gTLD applicants are thoroughly vetted through both domestic and international screening processes, that applicants should be required to identify the expected benefits of their new gTLD string to consumers, and that all registry operators are required to identify a an "abuse point of contact" that criminal and civil law enforcement authorities can contact for assistance in handling investigations of criminal activity. NTIA intends to collaborate with U.S. Government agencies, particularly those engaged in law enforcement, as well as interested U.S. stakeholders and counterparts in the GAC, to closely monitor the implementation of the new gTLD program in order to identify and mitigate any unintended consequences.

The Honorable John D. Dingell

1. **Cybersquatting is a problematic trend among dot-com sites. What assurances do we have that this practice will not persist or worsen under ICANN's new gTLD program? Please explain your response.**

There are a number of new rights protection mechanisms in the new gTLD program that are intended to minimize the incidence of, as well as provide tools to mitigate, cybersquatting and/or typosquatting. These include a Trademark Clearinghouse that will serve as a single database of authenticated registered trademarks which all new gTLD registry operators are required to use; a Uniform Rapid Suspension System that will provide relief to trademark holders for the most clear-cut cases of infringement and offer cheaper, faster responses than the existing Uniform Domain Name Dispute Resolution Policy; and a Post-Delegation Dispute Resolution Procedure that is intended to address a registry operator's bad faith intent to profit from systemic registration of infringing domain names. ,

2. **What was the National Telecommunications and Information Agency's (NTIA) and other governments' role in the development of ICANN's new gTLD program?**

Within ICANN, the GAC provides governments a meaningful opportunity to participate in the development of policies related to DNS issues. Over the last six years, NTIA has actively engaged with its counterparts in the GAC in developing advice to inform this program. In December 2010, the GAC developed a "Scorecard" of the outstanding issues

governments had with the program. Between February and June of 2011, GAC representatives from around the world met with the ICANN Board in extended face-to-face negotiations to review the GAC Scorecard and to identify specific differences between GAC advice and the existing version of the Applicant Guidebook. As the outcome of these unprecedented exchanges, the ICANN adopted a significant majority of the GAC recommendations in the program.

3. ***The Washington Post* recently published an editorial titled, "What's the .rush?" The editorial stated that ICANN's new gTLD program is "not ready for primetime" and should not go forward until substantial "enforcement and protection issues are resolved." Do you believe this editorial's points are accurate? Further, could the roll-out of the new gTLD program be delayed until such issues are resolved? Similarly, would significant harm be caused if the January 12, 2012, roll-out date for ICANN's new gTLD program were delayed? Please explain your responses to all questions.**

NTIA recognizes that the new gTLD program is the product of a six-year, international multistakeholder process and it does not seek to interfere with the decisions and compromises reached during that process. However, based on meetings NTIA held with industry over the past weeks, the agency has sent a letter to ICANN on January 3, 2012 urging ICANN to work to mitigate concerns and issues related to the perceived need for defensive applications. It appears that this possibility might not have been fully appreciated during the multistakeholder process on the belief that the cost and difficulty of operating a top-level registry would constrain companies from filing defensive registrations. NTIA believes that it would not be healthy for the expansion program if a large number of companies file defensive top-level applications when they have no interest in operating a registry. Accordingly, NTIA suggested in a January 3, 2012, letter to ICANN that it consider taking measures to mitigate against this possibility.

In addition, NTIA's letter cited an immediate need to improve communication with stakeholders and potential new gTLD applicants prior to the launch of the program. NTIA also advocated that following the application period, ICANN use the data that will then be available to examine the potential scope of the program and consider if there is a need for a phased implementation of new gTLDs. Using that data, ICANN can also explore the possibility of implementing additional protections by new TLD operators at the second-level. In addition to addressing these program-specific concerns, NTIA also reiterated the importance of implementing a stronger registrar accreditation agreement; improving current WHOIS policy; and dedicating resources to fully staff and equip the contract compliance department, including creating a centralized and automated complaint process. A copy of the January 3, 2012, letter to ICANN is enclosed.

ICANN has now taken steps to enhance its outreach in the United States, including holding an information session on January 11, 2012, in Washington, D.C. In addition, NTIA was encouraged by ICANN's January 11, 2012, written response in which ICANN commits to review possible improvements to the program, specifically to deal with the perceived need for defensive registrations at the top-level, as well as to complete a series of work streams

that will facilitate more effective tools for law enforcement and consumer protection. As is necessary in a multistakeholder process, all of these efforts will require active engagement by all parties prior to adoption.

4. **During the week of December 12, 2011, U.S. Federal Trade Commission (FTC) Chairman Jon Leibowitz told the House Committee on the Judiciary that ICANN's new gTLD program "has the potential to be a disaster for business and consumers." Leibowitz also said the expansion of top-level domains would increase problems for law enforcement. How do you respond to this assessment? Further, what has ICANN done to mitigate law enforcement concerns?**

   In developing U.S. Government positions for the GAC, NTIA coordinates with all interested federal agencies, including the FTC, through a monthly DNS issues interagency group. This was the case with respect to the new gTLD program where U.S. Government recommendations related to consumer protection and law enforcement were based on input from the FTC and other criminal law enforcement agencies such as the FBI, the FDA, and the DEA. All of the U.S. Government submissions to the GAC on these issues were endorsed and formally included in the GAC Scorecard, NTIA served as the GAC lead on these issues during the exchanges between the GAC and the ICANN Board, and the ICANN Board responded positively to all of the GAC recommendations on this topic. The key to success will be effective implementation and monitoring, and it is appropriate for the U.S. Government, including the FTC, to be vigilant in ensuring American consumers are protected as the program goes forward.

5. **Are there adequate protections from fraud and abuse for consumers, non-profits, and businesses built into ICANN's new gTLD program? In the event such protections are insufficient, what mechanisms will there be in place to ensure consumers, non-profits, and businesses are protected? Please explain your responses to all questions.**

   There are a number of new tools that have been incorporated into the new gTLD program in order to mitigate fraud and abuse. Effective implementation and monitoring of these new tools is critical. NTIA, for its part, will closely monitor the execution of the program and is committed to working with stakeholders, including U.S. industry, to mitigate any unintended consequences.

   The ICANN Board accepted a significant number of recommendations in the GAC Scorecard specifically related to consumer protection, including: a requirement that new gTLD registry operators maintain an "abuse point of contact" that is required to respond in a timely manner to a request from any government agency that is conducting a lawful investigation or official proceeding inquiring into a violation of or failure to comply with any criminal or civil statue or any regulation; expanding the scope of background screening of new gTLD applicants to include a broad range of criminal conduct; the disclosure of the identity of individuals names in each new gTLD application; disclosure whether a new gTLD applicant is offering augmented security capabilities to mitigate malicious or abusive behavior; and ensuring that ICANN's contract compliance function is sufficiently enhanced

to effectively enforce registry and registrar contracts. In addition, discussions continue among ICANN, the Registrars, and the GAC, including law enforcement representatives, regarding the 2009 Law Enforcement recommendations. ICANN and the Registrars effectively addressing these recommendations will further mitigate fraud and abuse.

The Internet Corporation for Assigned Names and Numbers

January 20, 2012

The Honorable Greg Walden
Chairman, Subcommittee on Communication and Technology
Committee on Energy and Commerce
U.S. House of Representative
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Chairman Walden:

Thank you for the opportunity to testify before the Subcommittee's hearing on December 14, 2011 regarding ICANN's new gTLD program. In response to your letter of January 5, 2012, attached please find ICANN's responses to the written questions for the record.

Best regards,

Kurt Pritz
Senior Vice President, Stakeholder Relations

cc: The Honorable Anna G. Eshoo, Ranking Member
Subcommittee on Communications and Technology

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Questions from the Honorable Henry Waxman, Ranking Member

Question 1: Could you generally describe how ICANN achieves "consensus" through its multi-stakeholder, bottom-up model? How did ICANN determine that a consensus existed for moving ahead with the expansion?

Answer:

For issues such as the expansion of new top-level domains, ICANN relies on its Internet community-driven policy development processes. Within the ICANN Bylaws-defined policy development processes, it is not ICANN's Board, management or employees defining the policies. That work is instead done through community working teams, comprised of members across Internet stakeholders. These working teams produce reports of proposed recommendations, which are posted for public comment by all who wish to become involved. Once public comment is considered and recommendations are finalized, the recommendations are presented to the appropriate organization of ICANN community members – such as the Council of the Generic Names Supporting Organization (GNSO) – to consider whether these recommendations should be provided to the ICANN Board.

The GNSO Council is comprised of all facets of the Internet community: Intellectual Property interests; business and commercial users; ISPs; non-commercial institutions, and ICANN's contracted registries and registrars. The Council determines by consensus whether the recommendations are passed to the ICANN Board. In the case of new gTLDs, a Bylaws-described voting procedure resulted in a 19-1 vote of those interests in favor the new gTLD Policy (the lone dissenting vote by a non-commercial interest found that the approved model had *too many restrictions*). Once the Council approves policy recommendations, the Board – after additional periods of public comment – considers whether to adopt the policy recommendations. Neither the ICANN Board nor ICANN staff crafts the policy recommendations – the community does.

ICANN's Advisory Committees also are necessary parts of the policy development process and ICANN consensus building. For example, if the community-crafted and approved policy recommendations touch on matters of public policy, the Governmental Advisory Committee – currently comprised of representatives of over 100 governments – may provide advice to the ICANN Board regarding the public policy issues. The Board is required to consider the GAC's advice and work to find a good-faith solution where the Board's action may not be consistent with the GAC's advice. As part of consensus development, the GAC reviewed the New gTLD Policy proposals in great detail. After extended, face-to-face discussions between governments and the GAC, consensus between those two groups was reached that: the expansion would be launched with certain enhancements to the new trademark protections and commitment to study the effects of trademark protections after the first round.

Similarly, the At-Large Advisory Committee (ALAC, representing the interests of Internet users), the Security and Stability Advisory Committee (SSAC, comprised of Internet security experts), and the Root Server System Advisory Committee (RSSAC, comprised of root server operators) may also provide input into the policy development process. For example, each of the root server operators was consulted to get their unanimous agreement that the expansion as planned would not affect root zone operation reliability or stability. In this way, all voices of the Internet community are present in policy development.

The policy recommendations to guide the introduction of new gTLDs were created by the GNSO over a two-year effort through its bottom-up, multi-stakeholder policy development process. In 2005, the GNSO initiated a formal, Bylaws-defined policy development process on the addition of new gTLDs. After the GNSO approved policy recommendations in 2007, they were submitted to ICANN's Board of Directors. In 2008, the ICANN Board approved the recommendations[1] and directed ICANN staff to commence the implementation phase.

After the directive to implement, ICANN continued working with the community on the design of the New gTLD Program to meet the policy recommendations. Since 2008, the New gTLD Program has been refined through ten independent expert working groups, 59 explanatory memoranda and independent reports, thousands of comments in no fewer than 47 extended public comment periods, and 1400 pages of comment summary and analysis. All comments were listened to and taken into account across eight versions of the *Applicant Guidebook*. The *Applicant Guidebook* implements the consensus polices developed by ICANN's multistakeholder community.

Lawrence Strickling, Assistant Secretary of Commerce for Communications and Information of the National Telecommunications and Information Agency, U.S. Department of Commerce, recently described the process of building consensus in ICANN's multistakeholder model, as well as the importance of respecting the outcomes reached, as follows:

> **The multistakeholder process does not guarantee that everyone will be satisfied with the outcome.** But **it is critical to preserving the model of Internet governance** that has been so successful to date **that all parties respect and work through the process and accept the outcome once a decision is reached.** When parties ask us to overturn the outcomes of these

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1 GNSO Final Report on the Introduction of New Top Level Domains ("Final Report"), *at* http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-

Also see The GAC Principles Regarding New gTLDs, at http://gac.icann.org/system/files/gTLD_principles_0.pdf (Mar. 28, 2007).

> processes, no matter how well-intentioned the request, they are providing "ammunition" to other countries who attempt to justify their unilateral actions to deny their citizens the free flow of information on the Internet. This we will not do. There is too much at stake here. [Emphasis added.][2]

ICANN's opening of the application window for new TLDs is in fulfillment of ICANN's role of accountability to the outcomes of the multistakeholder model. ICANN remains accountable to evaluation of the expansion and implementing refinements to the New gTLD Program that may arise through the multistakeholder model.

Question 2: Although the application window for new gTLDs will commence on Jan. 12, 2012, the actual launch of such gTLDs will not take place until 2013. At the hearing, however, it became clear that additional rights protection mechanisms are still being refined. Why should interested parties applying for new gTLDs before all relevant details have been finalized?

Answer:

The rights protection mechanisms for new gTLDs are being implemented according to a project plan. Consensus-based design decisions that ensure that the rights protection mechanisms achieve their intended benefit have been made and are complete. Because these protection mechanisms must be operational by early 2013, service providers are now being recruited and the specific rules by which they operate are being written.

When the ICANN Board approved the New gTLD Program in June 2011, the Applicant Guidebook included commitments to the implementation of rights protection mechanisms, both at the first level (for the top-level domains, or names to the right of the dot such as .org) and at the second level (second-level domains, like icann.org). Among those rights protection mechanisms for the second level is the formation of the Trademark Clearinghouse in advance of the introduction of the first new TLD approved through the Program.

There have been concerns raised that ICANN does not have all of the operational details of the Trademark Clearinghouse in place prior to accepting applications for new TLDs. However, the necessary details of the Trademark Clearinghouse, including the scope and applicability of the requirements, have been in place since the June 2011 approval of the launch of the New gTLD Program. Use of the

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[2] Remarks of Assistant Secretary Strickling at the Practising Law Institute's 29th Annual Telecommunications Policy & Regulation Conference, December 8, 2011, available at http://www.ntia.doc.gov/speechtestimony/2011/remarks-assistant-secretary-strickling-practising-law-institutes-29th-annual-te.

Trademark Clearinghouse will be mandatory for all new TLDs. With these details, TLD applicants have the information necessary to understand the scope of protections they must offer at the launch of a new TLD.

As stated above, the work that is still underway is defining the operational details of how the Trademark Clearinghouse will be operated and who will provide the service. The operational planning for the Trademark Clearinghouse is proceeding on time and in accordance with a project plan, and the Trademark Clearinghouse will be in operation prior to the introduction of new TLDs into the Domain Name System. Additional information on the status of implementation is available at http://www.icann.org/en/minutes/board-briefing-materials-4-05jan12-en.pdf.

Question 3: The Coalition Against Domain Name Abuse (CADNA) has called on ICANN to initiate a process to determine when a second round of new gTLD applications would be open. Has ICANN initiated a proceeding to examine this request? If not, why not?

Answer:

ICANN is committed to opening additional rounds of new gTLD applications, and work is underway to determine when the next round may take place. It is important to note that the timing of the next round is not an issue for a policy development process. The Consensus Policy for the introduction on new gTLDs approved by the Board in June 2008 requires ICANN to schedule additional rounds. One of the initial policy recommendations arising out of the Generic Names Supporting Organization is that, "[t]his policy development process has been designed to produce a systemized and ongoing mechanism for applicants to propose new top-level domains."[3]

ICANN is still working to identify a clearer timeline for the next round of applications. As part of the consensus-building process, ICANN has agreed with governments and trademark holders that the next round should occur after studying the impact of this round 's delegations on root zone stability and conducting a study on whether new trademark protections should be adjusted. ICANN will undertake these studies as soon as is practicable, in consultation with stakeholders. ICANN will also provide public updates on the ongoing process to determine the timing of the next round.

ICANN is also mindful of its obligations in the Affirmation of Commitments to, "organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer

[3] GNSO Summary of Policy Recommendations, at http://gnso.icann.org/issues/new-gtlds/summary-principles-recommendations-implementation-guidelines-22oct08.doc.pdf.

choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion."[4]

Question 4: What protections are in place to ensure that any surplus fees collected through the new gTLD program will be handled transparently?

Answer:

As a Not-for-Profit Public Benefit Corporation, ICANN is committed to its not-for-profit mission. For ICANN, that commitment requires us to assure that excess funds generated through the New gTLD Program (i.e., those that exceed the costs incurred for the processing, evaluation and other components of the New gTLD Program) are used in furtherance of ICANN's mission. The evaluation fee has been calculated to recover costs and not exceed those costs. If evaluation fees exceed actual costs, future evaluation fees will be reduced. If costs exceed fees, then ICANN will absorb that and future fees will be increased to meet the actual costs.

Other aspects of the New gTLD Program may result in additional funds accruing to ICANN (other than evaluation fees). The *Applicant Guidebook* addresses the issue in this way:[5]

> It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Any proceeds from auctions will be reserved and earmarked until the uses of funds are determined. Funds must be used in a manner that supports directly ICANN's Mission and Core Values and also allows ICANN to maintain its not for profit status.
>
> Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants

[4] See http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm.

[5] See Module 4, Page 19 of the *Applicant Guidebook*, version 2010-01-11.

(ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission.

ICANN handles its budgeting processes in an open and transparent manner. Not only will the community discussion regarding the use of excess funds be the subject of community consultation, but the funds will also be tracked and accounted for within ICANN's publicly-posted financial documents.

Question 5: You testified at a previous hearing that ICANN is currently engaged in bilateral negotiation with registrars concerning the twelve Law Enforcement Due Diligence Recommendations. Are such negotiations subject to public comment and input?

Answer:

Yes. ICANN and its accredited registrars are providing regular public updates on the status of negotiations. Those negotiations have included several face-to-face meetings in Los Angeles and Washington, D.C. Considerable progress has been made on all 12 recommendations. Updates on the negotiations are available at https://community.icann.org/display/RAA/Negotiations+Between+ICANN+and+Registrars+to+Amend+the+Registrar+Accreditation+Agreement. ICANN will publicly post proposed amendments to address the law enforcement recommendations (and more) for public comment. ICANN and the accredited registrars are also planning to hold a public session on the negotiations at ICANN's March 2012 meeting in Costa Rica. We are also planning meetings among law enforcement, registrars and ICANN to gain a unified understanding of the law enforcement requests.

Question 6: What sort of contingency plans has ICANN put in place in case one of the new registry operators goes out of business after obtaining and launching a new gTLD?

Answer:

Among other safeguards, ICANN has in place provision for an "Emergency Back End Registry Provider" to take over operations for a failed registry to ensure the interests of registrants are protected and domain names continue to resolve.

The issue of registry failure has been considered in detail through the work on the New gTLD Program. First, the extensive evaluation process will help assure that only companies that meet the stringent financial requirements are able to operate

new TLDs. Of course, this pre-emptive evaluation process may not fully protect against future registry failure, and ICANN has included multiple additional protections within the New gTLD Program to address potential failure.

During the application process, applicants are required to provide evidence that critical functions of the registry will continue to be performed even if the registry fails. This includes a requirement that the costs for maintaining critical registry functions over an extended period of time (between three to five years) be estimated as part of the application process, and registries must have available a Continuing Operations Instrument (funded through a letter of credit or an escrow account) that ICANN may invoke to pay an third party to maintain the critical registry functions.

ICANN is currently working to identify the entity that will serve as an Emergency Back End Registry Operator (EBERO), which will step in to perform the critical registry functions during the three-to-five year period. These provisions are expected to protect registrants against the risk of immediate registry failure.

To facilitate any need for emergency transition, ICANN also requires the escrow of registry data that the EBERO would be allowed to access for the purpose of providing the registry services.

In the event of a termination of a Registry Agreement, and in consultation with the registry operator, ICANN maintains the right to determine whether to transition the operation of a TLD to a successor registry operator as is necessary to protect the public interest. Transition is not required, however, if a registry operator's use of the TLD is for its own exclusive use and all names are registered and maintained by the registry operator.

Question 7. Please elaborate on the new program recently approved by the ICANN Board that will help reduce the costs for not-for-profit organizations that intend to apply for their .BRAND gTLDs? How many not-for-profits will benefit from this program if there is a $2 million cap on the assistance?

Answer:

This Applicant Support program was created through the input and recommendations of the Joint Applicant Support Working Group, a cross-community working group.

One part of the Applicant Support Program is embodied in the New gTLD Financial Assistance Handbook, which was released on January 11, 2012, and details the criteria for applying for financial assistance. Under this program, there are two types of assistance available: (1) a reduction in application fee to $47,000, reduced from $185,000; or (2) allowing an applicant to pay the $185,000 according to a

payment plan, instead of requiring full payment at the time of application. Those who qualify for financial support will have to meet demonstrated criteria, including that the proposed TLD will operate in the public interest, as well as demonstrating financial need and the financial capability to operate a registry. While the Financial Assistance program is not solely targeted to assist not-for-profit organizations in applying for new gTLDs, the involvement of a not-for-profit organization in an application provides an additional point towards scoring an applicant's eligibility for either form of assistance.[6] The evaluation of Financial Assistance Applications will be performed by an independent Support Application Review Panel (SARP) that is being comprised.

ICANN has committed to contribute $2 million to a seed fund for applicant support, and is evaluating how additional funding could be contributed to expand the size of this fund. The size of the fund in November 2012 – the date of making financial assistance award determinations – will dictate the number of applicants receiving the $138,000 award ($185,000 minus $47,000). Those applicants rated highest by the SARP will be eligible for the $138,000 fee reduction, until the fund is exhausted. After exhaustion, the remaining applicants who met the minimum qualifying criteria for applicant support may elect to proceed on a staggered payment schedule, or may withdraw their application and seek a refund.

Another part of the Applicant Support Program intended to reduce costs for not-for-profit organizations is the Applicant Support Directory, an online workspace created to connect potential applicants who wish to establish a new public interest gTLD registry in their community with organizations who wish to offer either financial or non-financial assistance.

Question 8. I understand that ICANN believes concerns over defensive registrations at the second-level domain names would partially be alleviated by mechanism such as a Trademark Clearinghouse. However, the proposed Clearinghouse only runs for 60 days of any new gTLD. Why shouldn't this Clearinghouse be extended permanently?

Answer:

The Trademark Clearinghouse is part of a suite of rights protection mechanisms that were created through expert input. The Clearinghouse is a database of registered trademarks and other forms of intellectual property. The Clearinghouse will provide protections through the operation of "Sunrise" and "Trademark Claims" processes.

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[6] Neither the Applicant Guidebook nor the Financial Assistance Handbook reference ".BRAND" applications. There are some limitations on eligibility for financial assistance if a string is intended to reference a trademark, however, applications for names of communities or non-governmental agencies may still be considered even if they have obtained legal trademark protection.

"Sunrise" gives rights holders the right of first refusal on any second-level name before there is general availability. The Claims process provides a warning notice to anyone trying to register a trademarked name during the registry start-up period.

Both of those processes were designed by intellectual property experts to provide protections during the start-up phase for any new gTLD. Other protections are designed for longer-term operation. For example, "IP Watch" services are already provided by private firms, and it was not necessary for the rights protection mechanisms specific to the New gTLD Program to compete with those ongoing watch services already available. In addition, rapid take down and new dispute resolution processes have designed to provide protection during ongoing registry operation.

The Trademark Clearinghouse can also be used for other purposes. The way has been paved for those providing IP Watch services to improve by using the Clearinghouse database.

The issue of the length of the Trademark Claims service has been an area of extensive debate within ICANN. The Trademark Claims service was developed through two community expert groups – the Implementation Recommendation Team (IRT), comprised of 18 intellectual property experts, and the Special Trademark Issues (STI) Team, comprised of representatives of each of the GNSO Stakeholder Groups. The 60-day post launch operation of the Trademark Claims service actually *exceeds* the final recommendation of the STI, which suggested that no mandatory post-launch claims service was required.

These protections were also enhanced in response to consultation with ICANN's Governmental Advisory Committee (GAC). In addition, ICANN has agreed to undertake studies of a post-launch review on the feasibility of enhancing both the scope of the words registered within the Clearinghouse and the length of the Trademark Claims notification process. If further protection is warranted and feasible, these enhanced protections could be included in future gTLD application rounds.

Question 9. Leading providers under Uniform Dispute Resolution Policy (UDRP) have complained that current fees collected are inadequate to cover the costs of retaining qualified trademark attorneys. Has ICANN considered using surplus funds from the new gTLD program to support stronger rights protection mechanisms, such as using the extra funds to subsidize costs to rights holders when a losing party skips out on payment (or simply refuses to show up) during the dispute resolution process?

Answer:

It is possible for community members to raise such suggestions through ICANN's annual public cycles of strategic planning and budgeting. As discussed in response to Question 4 above, the use of excess funds generated through the New gTLD Program is a matter for continued community consultation. No commitments have been made on the use of the funds. ICANN will of course consider any proposals from the community on directing excess funds to subsidize disputes under the Uniform Domain Name Dispute Resolution.

Question 10. Some critics have pointed to the inadequacies of the "thick" Whois system. Has ICANN considered mandating registrant verifications? If not, why not?

Answer:

ICANN seeks to improve access to Whois information and accuracy of Whois information. By mandating "thick" Whois within all new gTLDs, there will be more information available on registrants – making bad actors easier to locate. In addition, there is a strong incentive for applicants to implement "searchable" Whois. Both of these measures are recommended by intellectual property rights and domain name security experts to make it easier to access information and combat malicious conduct where it occurs. In addition, the new Program provides centralized access to registry data, creating for the first time a one-stop shop for accredited parties to view data in all registries. These requirements represent significant improvement for combating malicious conduct.

ICANN is also working to improve Whois accuracy. We cannot currently require verification or authentication at the time of registration by an accredited registry of a new second-level domain name applicant. The ICANN community has been considering Whois-related issues for years,[7] and ICANN is actively working to enhance Whois and to provide an improved environment for law enforcement and consumers through improving Whois accuracy and access to data.

As discussed in response to Question 5, ICANN is currently in negotiations with its accredited registrars over amendments to the Registrar Accreditation Agreement. ICANN is negotiating amendments regarding to the verification of Whois data, and expects its accredited registrars to take action to meet the rising call for verification of data. ICANN expects that the RAA will incorporate – for the first time – Registrar commitments to verify Whois data. Proposed amendments should be posted prior to ICANN's March 2012 meeting in Costa Rica. The amendments are expected to be in force prior to the launch of the first new TLD in 2013.

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[7] A comprehensive listing of the past work regarding Whois is available at http://gnso.icann.org/issues/whois/.

In addition, ICANN has committed substantial resources to Whois data-related issues. There are five separate studies currently underway regarding Whois services. These studies including issues on misuse, registrant identification and privacy/proxy services.[8] Most of these studies are expected to conclude within 2012. This is work is intended to inform, facilitate and expedite ongoing policy work within the GNSO on Whois data issues.

ICANN is also committed to fully evaluate the implementation of the final recommendations of the Whois Review Team convened under the Affirmation of Commitments. The Review Team's draft recommendations are now the subject of a public comment proceeding.

Combined with the enhanced access to data under the New gTLD Program, the expected commitments to verification achieved through the RAA negotiations will be a significant improvement to the state of Whois data today. As studies and further policy development continue within the GNSO, further Whois improvements may continually be introduced.

Question 11. I understand that ICANN recently initiated four major studies of Whois. Why were these studies initiated so close to the gTLD application date?

Answer:

As discussed within the response to Question 10, Whois work has been ongoing within ICANN for over ten years. For the current studies underway, some have been in planning stages for multiple years, and have gone through iterations of scoping, feasibility of the studies, budgeting, receiving requests for proposals and the ultimate selection of vendors. These studies are proceeding on a timetable independent of the New gTLD Program; indeed the timetable for the New gTLD Program was not determined until June 2011. The Whois work today is largely focused on studying Whois-related issues within existing registries, but the outcomes of these studies will continue to inform the development of Whois improvements in both existing and new gTLDs.

Question 12: How confident is ICANN that the "thick" Whois to be required for the rollout of new gTLDs will adequately address existing issues with the Whois system? Specifically, what are the accompanying new requirements for these databases to be authenticated and accurate?

Answer:

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[8] The Whois studies are identified at http://gnso.icann.org/issues/whois/studies.

ICANN does not believe that work on Whois stops with implementation of thick Whois databases, or with the other measures to increase ease of access to data: searchable Whois and centralized access to TLD data. In response to Question 10, ICANN provides a discussion of how the enhanced Whois-related requirements within the New gTLD Program will be improved through the expected commitments on verification to be achieved in the RAA negotiations and additional study.

With these combined protections, law enforcement and consumers will observe improvements to Whois database issues. However, Whois presents complex policy issues for both law enforcement and privacy interests. ICANN is committed to work through these issues with law enforcement agencies and others to develop policies that will provide effective tools for the protection of consumers.

Question 13: Please provide a breakdown of the $185,000 application fee.

Answer:

The $185,000 application fee was determined through a comprehensive and complex process that included identifying over 100 separate tasks required for the evaluation of a new gTLD application and seeking guidance from experts. The fee includes development costs ($26,950 per application); application processing and evaluation costs ($97,800 per application); and costs for risk mitigation steps, including allowance for unanticipated costs and variations between estimates and actual costs incurred ($60,000 per application). A 14-page document setting out the methodology and further breakdown of the fee component is available at http://www.icann.org/en/topics/new-gtlds/cost-considerations-04oct09-en.pdf. This document is an update to the earlier "Cost Considerations of the New gTLD Program", published in October 2008, available at http://www.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf.

Question 14: How will ICANN determine whether the application fees cover the actual application processing and evaluation costs? Will ICANN make that information publicly available?

Answer:

Throughout the development of the New gTLD Program, ICANN has been transparent about the basis of the estimation of costs for the new gTLD program, and ICANN will continue to be transparent regarding reporting actual costs incurred. It is only upon review of the actual number of applications and a comparison of the actual costs to the estimates that ICANN can complete the determination requested above. ICANN has already committed to community reporting regarding the fees and expenses as the implementation of new gTLDs

progresses, and to handling any surplus or deficit with community consultation. The basis for the New gTLD Program budget is provided in an October 2011 Explanatory Memorandum, available at http://www.icann.org/en/topics/new-gtlds/explanatory-memo-new-gtld-program-budget-22oct10-en.pdf.

Question 15: Has ICANN evaluated the revenue to be generated from second-level domain name registrations under new gTLDs to be launched, including revenue to be garnered from defensive registration?

Answer:

ICANN has not undertaken an evaluation of additional revenue to be generated from defensive second-level domain name registrations under new gTLDs. As new gTLDs become operational, those registries are obligated to pay ICANN annual fees with a fixed component and, for large registries, a transaction-based component. For registries with fewer than 50,000 registered names, there is a fixed fee but no transaction-based fees. All of these fees are targeted to provide ICANN services to meet the needs of the community of registrants and Internet users through: a robust contractual compliance program, Internet security work, root-management services, formation of additional protections and other programs.

Per-registration transaction fees have decreased over the past several years. In FY08, ICANN reduced the registrar-level transaction fee from $.25 to $.20. That number decreased further in FY10, to $.18 per transaction. As a not-for-profit, the transaction fees are one component of how ICANN maintains its budgeted operations. If, however, additional transaction-level fees would exceed ICANN's operational needs, ICANN may reduce those fees to an appropriate level as measured against the budgeted expenses.

Question 16: In 2003, ICANN shifted from a fixed-fee model to a transaction-based fee model on the theory that such model would provide more predictable and sustainable funding for ICANN. Please explain why ICANN as once again switched over to a cost-recovery model in assessing fees?

Answer:

The cost-neutral model of the New gTLD Program does not represent a fundamental shift from a transaction-based fee model. First and foremost, ICANN is a public benefit, not-for-profit entity. Consequently, ICANN operates generally on a cost-recovery basis. The transaction-based model for on-going registrar and registry fees was designed to ensure that ICANN could grow services in a way that corresponds with growth in the Domain Name System.

The requirement that new gTLD application fees be designed as cost neutral within the New gTLD Program itself is in direct response to the GNSO policy recommendation that "Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process." The application fee was designed so that the new gTLD implementation will be fully self-funding, so that ICANN's technical coordination work and other activities will not subsidize the new gTLD application process. In a sense, the new gTLD evaluation fee is a transaction-based fee also – one fee per application. ICANN fees across the board are administered in a consistent way.

Once the new TLDs are operational, the transaction-based fees currently in place for ICANN's registries and registrars will be operative for the domain name registrations within those new TLDs.

Question 17: Why hasn't ICANN adopted a full "loser pays" system to deter cybersquatting in the new gTLD program?

Answer:

New gTLD dispute resolution processes implemented in this program are loser pays systems:

- If a trademark holder files a formal objection to a proposed new registry based on infringement, that dispute is resolved on a loser-pays basis.
- If a trademark holder files a claim using the new ICANN procedure against a registry that is already in operation, that dispute is resolved on a loser-pays basis.
- If a trademark holder files a Uniform Rapid Suspension claim and that claim is for 15 or more names, that dispute is resolved on a loser-pays basis.

The exceptions to a loser pays methodology involves limited (not all) filing fees for disputes and URS claims of less than 15 names. As discussed in response to Question 8, the trademark protections – including the Uniform Rapid Suspension System – were developed through two community expert groups, e.g., the Implementation Recommendation Team (IRT), comprised of 18 intellectual property experts.

The IRT did not recommend moving to a full loser-pays system for domain name disputes related to cybersquatting. The IRT suggested that claims for 26 or more names in a URS claims might be done on a loser-pays basis. The IRT raised a concern that the time and effort that would be required for collection efforts would ultimately increase the costs of the URS, as many registrants may never appear in the suit and could be hard to locate. The specter of a full loser-pays model may also

discourage individual domain name registrants from filing responses, out of fear of increased costs.

After consultation with the Governmental Advisory Committee, the threshold to enter the partial loser-pays system was reduced to disputes that involve in excess of 15 domain names. This partial loser-pays system helps to meet the stated goals of the URS to be "fast and fair."

Question 18: I understand that ICANN may conduct competitive bidding for the right to operate new gTLDs if there are multiple interested parties. Has ICANN considered using the same auction process for the right to maintain existing registry contracts that could actually help keep prices in check and reduce costs for registrants, as well as consumers?

Answer:

The availability of an auction process in the event that there are multiple applicants for the same TLD is intended as a last-resort method. ICANN encourages applicants to work together to arrive at a mutually-agreeable solution instead of allowing the competing applications to proceed to an auction.

While auctions are available to resolve contention for a gTLD at the time of application, auctions are not considered to be a viable mechanism for assuring the continued operation of a TLD. The proposed gTLD Registry Agreements allow for presumption of renewal of the Registry Agreement so long as the registry operator remains in compliance with the conditions of the Agreement. The U.S. Federal Communications Commission has a similar "renewal expectancy" policy with respect to spectrum licenses.

ICANN undertook a serious balancing of benefits and risks regarding the development of this model. Requiring competitive bidding for the renewal of registry agreements will put the gTLD operator at risk of needing to "payoff" competing bidders and does not provide any guarantee of better service. Without some assurance of renewal, today's applicants for new gTLDs would be hesitant to innovate and invest in a registry. Instead, the presumptive renewal gives incentive to registry operators to develop new technologies without fear of losing their investment.

In addition, ICANN expects that "switching" a registry operator upon a completion of an auction would not be a simple or straightforward process, and that factors other than price may also be attractive to consumers. The New gTLD Program allow for community-based TLDs, as well as other TLDs that will have special attributes that will not make them easily transferable to the highest bidder. For example, work has been conducted towards creating a higher security TLD for the financial services industry, where the registry operator would commit to additional protections for

the development of a TLD where consumers know they are making financial transactions in a trusted space. Security – and not price – may be the determining factor for the success of such a TLD. However, making the investments necessary to create this more secure zone may not be attractive to an applicant who does not have some assurance of renewal of its registry agreement.

The Honorable Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Question 1: During your testimony, you indicate that ICANN had recently approved a reduced application fee of $47,000 for non-profit organizations. What criteria must be met in order to receive the reduced fee? How many non-profit organizations will be able to take advantage of this discount in the first round of applications?

Answer:

As explained in response to Congressman Waxman's Question 7, this Applicant Support program was created through the input and recommendations of the Joint Applicant Support Working Group, a cross-community working group.

One part of the Applicant Support Program is embodied in the New gTLD Financial Assistance Handbook, which was released on January 11, 2012, and details the criteria for applying for financial assistance. Under this program, there are two types of assistance available: (1) a reduction in application fee to $47,000, reduced from $185,000; or (2) allowing an applicant to pay the $185,000 according to a payment plan, instead of requiring full payment at the time of application. Those who qualify for financial support will have to meet demonstrated criteria, including that the proposed TLD will operate in the public interest, as well as demonstrating financial need and the financial capability to operate a registry. While the Financial Assistance program is not solely targeted to assist not-for-profit organizations in applying for new gTLDs, the involvement of a not-for-profit organization in an application provides an additional point towards scoring an applicant's eligibility for either form of assistance. The evaluation of Financial Assistance Applications will be performed by an independent Support Application Review Panel (SARP) that is being comprised.

ICANN has committed to $2 million to a seed fund for applicant support, and is evaluating how additional funding could be contributed to expand the size of this fund. The size of the fund in November 2012 – the date of making financial assistance award determinations – will dictate the number of applicants receiving the $138,000 award ($185,000 minus $47,000). Those applicants rated highest by the SARP will be eligible for the $138,000 fee reduction, until the fund is exhausted. After exhaustion, the remaining applicants who met the minimum qualifying criteria for applicant support may elect to proceed on a staggered payment schedule, or may withdraw their application and seek a refund.

Another part of the Applicant Support Program intended to reduce costs for not-for-profit organizations is the Applicant Support Directory, an online workspace created to connect potential applicants who wish to establish a new public interest gTLD registry in their community with organizations who wish to offer either financial or non-financial assistance.

Question 2: What was the application fee for the last five gTLDs that ICANN rolled out?

Answer:

ICANN has operated two prior application rounds for new gTLDs, one in 2000 and one in 2004. The application fee in 2000 was US$50,000. The application fee in 2004 was US$45,000. The last five gTLDs approved by ICANN were all from the 2004 round.

While the application fee of the 2004 round was intended to cover the costs of the application evaluation process, experience has shown that the US$45,000 fell far short of the actual costs incurred. In fact, it is estimated that that the staff costs, consulting costs, and outside services resulted in at least $180,000 in costs per application. One of the experiences learned from the 2004 round was the true scope of the evaluation panels needed, and the cost estimates for today's New gTLD Program applications are made taking into account the lessons learned in 2004.

Detail on the process, assumptions and estimates used to reach the $185,000 per application fee for the New gTLD Program are set out in a 14 page document on the cost considerations of the New gTLD Program. That document is available at http://www.icann.org/en/topics/new-gtlds/cost-considerations-04oct09-en.pdf.

Question 3: When does ICANN intend to announce the details for the second round of applications?

Answer:

As discussed in response to Congressman Waxman's Question 3, ICANN is committed to opening additional rounds of new gTLD applications, and work is underway to determine when the next round may take place. It is important to note that the timing of the next round is not an issue for a policy development process. The Consensus Policy for the introduction on new gTLDs approved by the Board in June 2008 requires ICANN to schedule additional rounds. One of the initial policy recommendations arising out of the Generic Names Supporting Organization is that, "[t]his policy development process has been designed to produce a systemized and ongoing mechanism for applicants to propose new top-level domains."[9]

ICANN is still working to identify a clearer timeline for the next round of applications. As part of the consensus-building process, ICANN has agreed with governments and trademark holders that the next round should occur after

[9] GNSO Summary of Policy Recommendations, at http://gnso.icann.org/issues/new-gtlds/summary-principles-recommendations-implementation-guidelines-22oct08.doc.pdf.

studying the impact of this round 's delegations on root zone stability and conducting a study on whether new trademark protections should be adjusted. ICANN will undertake these studies as soon as is practicable, in consultation with stakeholders. ICANN will also provide public updates on the ongoing process to determine the timing of the next round.

ICANN is also mindful of its obligations in the Affirmation of Commitments to, "organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion."[10]

[10] See http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm.

The Honorable John D. Dingell

Question 1: Cybersquatting is a problematic trend among dot-com sites. What assurance do we have that this practice will not persist or worsen under ICANN's new gTLD program? Please explain your response.

Answer:

We do not expect instances of malicious conduct to increase. New gTLDs come with heightened protections. Taking these and other factors into account, we expect that new TLDs will be a less fertile ground for wrongdoing and, as a result, the Domain Name System, as a whole will be improved.

The New gTLD Program includes many new trademark protections to help protect intellectual property rights and combat the abuses that are prevalent in the heavily trafficked gTLDs such as .COM. These include:

- Uniform Rapid Suspension: A rapid, inexpensive way to take down infringing domain names;
- Trademark Clearinghouse: a one-stop shop so that trademark holders can protect their property right in ALL new TLDs with one registration;
- Mandatory sunrise *and* Trademark Claims processes for *all* new gTLDs;
- The requirement to maintain thick Whois information, provision of centralized access to zone data, and a strong incentive to provide a searchable Whois database – all to make it easier to find infringing parties; and
- A post-delegation dispute procedure where rights holders can assert claims directly against TLD registry operators for domain name abuse if the registry has played an active role.

In addition, there are new measures designed to mitigate malicious conduct on the Internet, and increase security of the Internet, formed with teams of experts:

- Background reviews of TLD applicants, including reviews for criminal history (including the use of telecommunications or the Internet to facilitate crimes, illegal sale of drugs, and others);
- Rejection of applications where the applicant has a pattern of adverse decisions under the UDRP (Uniform Domain Name Dispute Resolution Policy), or has been found to act in bad faith or reckless disregard under

cybersquatting legislation – a protection targeted directly against cybersquatting activities;

- The requirement to have a plan to implement domain name system security extensions (DNSSEC), reducing the risk of "man-in-the-middle" attacks and spoofed DNS records;

- A requirement to maintain enhanced, or "thick", WHOIS records at the registry level to allow more rapid search capabilities, facilitating efficient resolution of malicious conduct activities;

- A centralized zone file access system to allow for more accurate and rapid identification of key points of contact within each gTLD. This reduces the time necessary to take corrective action within TLDs experiencing malicious activity; and

- A requirement to establish a single point of contact responsible for the handling of abuse complaints (as requested by law enforcement authorities).

With these and the other protections detailed within my written testimony, the New gTLD Program provides a baseline for more secure TLDs, reducing opportunity for malicious conduct.

Question 2: The Association of National Advertisers (ANA) has raised a number of concerns with ICANN's new gTLD program, including that such program will cause the misappropriation of intellectual property, spur defensive registrations, lead to domain navigation dilution, increase cybersquatting, reduce investment by intellectual property owners, and bring about losses from failed top-level domain names. What has ICANN done to address these concerns? Does ICANN plan to do more? Please explain your responses to both questions.

Answer:

As detailed in response to your Question 1, the years of policy and implementation design work that have gone into the New gTLD Program have formed a program that will result in TLDs that are required to offer more protections than TLDs that have already been introduced into the Domain Name System. The program was designed over more than six years, with input from no less than ten independent expert and community working groups addressing the issues that ANA continues to raise outside of the multi-stakeholder process. There are significant trademark protections designed by intellectual property experts. There are substantial protections against registry failure, including requirements for registry transition planning and designation of emergency registry operators, so that even in the event

of registry failure, consumers will have a period of three to five years until basic registry operations are concluded.

One of the hallmarks of ICANN is its ability to call together world-class experts to consider issues facing the ongoing stability and security of the Internet. For the new gTLD program, ICANN formed teams of: intellectual property experts to develop trademark protection mechanisms; Internet security experts to develop consumer protections; registry operators to creates mechanisms to access registry data; financial services providers to develop thresholds for "secure" TLDs; and linguists to avoid user confusion.

With the opening of the application window, ICANN's work continues. ICANN has already committed to solicit information as expeditiously as possible from the intellectual property community. This commitment, set out in a January 11, 2012 letter to Assistant Secretary for Communications and Information, Lawrence Strickling, also committed ICANN to submit any new proposals or recommendations arising out of that work for evaluation and comment from the ICANN stakeholder community.

ICANN has already committed to review the impacts of the rollout of the New gTLD Program, including a post-launch study on the effectiveness of the new trademark protections and any effects on root zone operations, and a post-delegation economic study on the results of the first set of new gTLDs. ICANN has also committed to undertake reviews in accordance with the Affirmation of Commitments between the United States Department of Commerce and ICANN, including a review "that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion." There will be opportunities for public input regarding all of this post-launch work.

ICANN looks forward to ICANN and Internet community members continuing their involvement within the multi-stakeholder model and bringing their proposals for discussion among all of the Internet's stakeholders.

Question 3: In an October 27, 2011 letter from ICANN's Governmental Advisory Committee (GAC), the GAC expressed concern that 12 recommendations put forward by the law enforcement community had not been implemented by ICANN. Why were none of these recommendations implemented? Moreover, what steps does ICANN plan to take to help mitigate the concerns of both the law enforcement community and the GAC? Finally, does ICANN expect to complete negotiations with law enforcement in time so that the results of such negotiations will apply to gTLDs issued under ICANN's new program? Please explain your responses to all questions.

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Answer:

ICANN is actively working to address all twelve of the law enforcement recommendations referenced in the GAC's October 27, 2011 communication. Specifically, as directed by the Board, ICANN is currently in negotiations with its accredited registrars on amending the Registrar Accreditation Agreement (RAA) to meet the recommendations raised by law enforcement authorities. Amendments are expected to be in force prior to the entry of the first new TLD in 2013.

These negotiations include face-to-face meetings with law enforcement agencies to ensure understanding of law enforcement requirements. The negotiation anticipates substantial and unprecedented steps to improve the accuracy of Whois data. ICANN is taking a strong stand in regard to issues relating to the verification of Whois data and expects the accredited registrars to take action to address the demands of governments and law enforcement worldwide. Updates on the negotiations are available at https://community.icann.org/display/RAA/Negotiations+Between+ICANN+and+Registrars+to+Amend+the+Registrar+Accreditation+Agreement.

By February 20, 2012, proposed amendments to address the law enforcement recommendations (and more) will be posted for public comment. One important aspect of the negotiations focuses on the verification of Whois data, and work is underway to plan a targeted forum, including representatives of law enforcement and experts in verification. This forum would be open to the public and is expected to take place before the ICANN meeting in Costa Rica.

The Honorable Bob Latta

Question 1: What type of cost/benefit analysis was carried out before ICANN proceeded with its proposal to expand the top level domain space on an unlimited basis?

Answer:

Prior to this rollout, ICANN commissioned five economic studies that examined anticipated benefits and costs of the new gTLD program, the effects of price constraints, and the benefits of vertical integration. All support a conclusion that Internet users stand to benefit from the introduction of new gTLDs.

Those five reports are:

- Dr. Dennis Carlton, Report Regarding ICANN's Proposed Mechanism for Introducing New gTLDs, *at* http://www.icann.org/en/topics/new-gtlds/carlton-re-proposed-mechanism-05jun09-en.pdf ("Carlton I");
- Dr. Dennis Carlton, Preliminary Analysis Regarding Price Caps for New gTLD Internet Registries, *at* http://www.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf ("Carlton II");
- CRA International, Revisiting Vertical Separation of Registries and Registrars, *at* http://www.icann.org/en/topics/new-gtld-crai-report-24oct08-en.pdf;
- Michael Katz, Gregory Rosston and Theresa Sullivan, An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names, *at* http://www.icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf ("Katz/Rosston Phase I"); and
- Michael Katz, Gregory Rosston and Theresa Sullivan, Economic Considerations in the Expansion of Generic Top-Level Domain Names – Phase II Report: Case Studies, http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf (December 2010) ("Katz/Rosston Phase II").

The reports are detailed. Briefly summarized, the reports indicate that: benefits will accrue from the opening of this market in a way similar to other markets; innovation (and thus benefit) is difficult / impossible to quantify; and costs should be mitigated through the adoption of new trademark and consumer protections.

This work followed the careful consideration of the Internet community through ICANN's bottom-up process. The first question considered in that process was whether new gTLDs should be introduced and how that introduction should be constrained. The Policy conclusion was that new gTLDs should be introuduced in

rounds and that safeguards be introduced to protect rights and public policy interests.

For issues such as the expansion of new top-level domains, ICANN relies on its Internet community-driven policy development processes. Within the ICANN Bylaws-defined policy development processes, it is not ICANN's Board, management or employees defining the policies. That work is instead done through community working teams, comprised of members across Internet stakeholders. These working teams produce reports of proposed recommendations, which are posted for public comment by all who wish to become involved. Once public comment is considered and recommendations are finalized, the recommendations are presented to the appropriate organization of ICANN community members – such as the Council of the Generic Names Supporting Organization (GNSO) – to consider whether these recommendations should be provided to the ICANN Board.

The GNSO Council is comprised of all facets of the Internet community: Intellectual Property interests; business and commercial users; ISPs; non-commercial institutions, and ICANN's contracted registries and registrars. The Council determines by consensus whether the recommendations are passed to the ICANN Board.

To be clear, the New gTLD Program provides for a limited rollout of new TLDs: limited by round and by demand. Stringent qualification requirements and the finite application window also limit the opening of TLDs. ICANN has set a high bar, rigorous technical, financial and operational requirements that applicants must meet in order to be eligible. Applying is only viable for those that can demonstrate these requirements. Although the application window opens on January 12, 2012 and closes 90 days later, the first new TLDs will not be operational until early 2013. The first entries will likely be those that are least controverted and the delegations will occur in a distributed way well into 2014. New TLDs will be added as other applicants are able to pass through the scrutiny of objection processes and evaluation. Great care and deliberation is built into this roll-\out.

In the Affirmation of Commitments between the United States Department of Commerce and ICANN, ICANN committed to organizing a reivew that will examine the extent to which the introduction or examtion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion. This review is to take place if and when new gTLDs have been in operation for one year.

Given the scope of the economic study already undertaken, as well as the commitment to measuring the effects of new gTLDs once there is actual data to inform that assessment, the Board and the Governmental Advisory Committee agree that further economic study would not be beneficial prior to the opening of the application round. Instead, the Board and the GAC focused on the collection of

information that will inform the analysis of the effects of the introduction of new gTLDs after this first round. The *Applicant Guidebook* now includes application questions that are specifically targeted to collect information relating to stated purposes and anticipated outcomes of each application, for use in later studies.

Insights | Collaboration | Advocacy

January 20, 2012

The Honorable Greg Walden
Chairman, Subcommittee on Communications and Technology
Committee on Energy and Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden:

We appreciate the opportunity for the Association of National Advertisers (ANA) to testify at the Subcommittee hearing on December 14, 2011 on ICANN's Top-Level Domain Name Program.

Attached is our response to the additional questions that were submitted for the Record by members of the Subcommittee.

Thank you for your leadership on this critical issue. Please contact me at djaffe@ana.net or by phone at (202)296-1883 if you or your staff have any questions.

Sincerely,

Daniel L. Jaffe
Executive Vice President
Association of National Advertisers

(1) The Honorable Anna G. Eshoo: In your testimony, you noted the proliferation of domain names would raise costs for domain name owners for things like defensive registrations and monitoring. Can you summarize these costs and what impact they'd have on your member companies?

Answer: The immediate cost imposed on businesses is likely to be in the billions of dollars. Applying for a new Top Level Domain name will require an extraordinarily expensive registration fee of $185,000 as well as a minimum cost of $25,000 paid annually to ICANN over the ten-year contractual commitment that successful Top Level Domain applicants must make. Costs will further escalate at the second level of naming – the word to the left of the "dot" in an Internet address – as brand owners will have to consider registering each of their brand-related terms, for either commercial or defensive purposes.

Some have estimated that, for a typical company, the cost of acquiring a single gTLD and managing it over the initial commitment of ten years could easily exceed $2 million, including expenses for the application process, operations, disputes, and related legal services. The costs associated with trademark monitoring and protection in all the new gTLD spaces will run even higher. Some members of ANA and the Coalition for Responsible Internet Domain oversight (CRIDO) spend over $1 million a year today to enforce against cybersquatting and fraud in the existing 22 gTLD spaces. These numbers will clearly escalate if ICANN's proposal goes forward. In addition, many companies may face an auction if multiple groups are vying for a generic Topic Level Domain, which will result in higher costs to ICANN's benefit. An auction for a highly contested named could certainly run into the multi-millions of dollars. Many companies have hundreds or even thousands of brands to defend. Brand owners will face a Hobson's choice of either being compelled to spend substantial resources to acquire and manage new gTLDs or risk the harm to their brands that could occur if they take no action. This has certainly been the message spoken loud and clear to us from our members and the many groups within CRIDO.

(2) The Honorable Bob Latta: What will the American business community have to do to protect themselves?

a. What types of processes are in place to protect copyright or brand owners from those who wish to profit at their expense?
b. Was there any type of examination into what types of defensive measures companies will have to take and what this will ultimately cost consumers?

Answer: We believe the new TLD program is bad for marketers, consumers and the entire online marketplace. For example, brand owners may be compelled to file multiple defensive registrations, i.e. registrations undertaken to protect legitimate trademark or intellectual property rights from misuse, not registrations undertaken as the "defense" of one's business against increased competition on the merits. This cost alone could be in the hundreds of thousands of dollars per brand name, creating a multi-million dollar liability for major corporations and a multi-billion dollar cost to the business community.

ICANN has recently instituted a number of further protections to the system, but none of these protections have been tested. It is reckless to open the Top Level Domain window in a veritable names rush without, at the very least, carrying out a small pilot project in order to see how these new systems operate in the real world.

ICANN has been considering this program for several years. ANA objected to this proposal as did many other industry groups and companies. Several months ago, ANA formed the Coalition for Responsible Internet Domain Oversight (CRIDO). That coalition now includes 161 major national and global companies and trade associations that have joined together to oppose ICANN's TLD program as currently configured. Even important governmental entities, including international law enforcement and consumer protection agencies, have recently expressed deep misgivings about the impact of the program on both companies and consumers

We commend you for joining with 16 other members of the House Energy and Commerce Committee in the December 21, 2011 letter to ICANN calling for a delay in the opening of the application window for new TLDs. Unfortunately, these strong objections from the business community, the law enforcement community and more than 25 members of Congress have largely fallen on deaf ears with ICANN.

(3) The Honorable John D. Dingell: Cybersquatting is a problematic trend among dot.com sites. What assurances do we have that this practice will not persist or worsen under ICANN's new gTLD program? Please explain your response.

Answer: One of the most incipient and costly challenges to the proposed TLD expansion is the prospect of cybersquatting and the substantial costs associated with preventing and policing it, which are already well into the billions of dollars. Indeed, ICANN's own experts noted this challenge in a 2010 report issued before the Board's vote to expand the program: "In addition to harm in the form of increased search costs consumers may suffer more direct harm from increased cybersquatting. This direct harm may result from malware, phishing, and the unknowing purchase of counterfeit goods." See: Michael L. Katz et al., Economic Considerations in the Expansion of Generic Top-Level Domain Names Phase II Report: Case Studies (2010) http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf

While ICANN's experts opined that such a result "may" occur, history proves that cybersquatting will occur, just as it has with every TLD that has ever been administered by ICANN.

In a very detailed letter to ICANN dated December 16, 2011, the Federal Trade Commission (FTC) stated that the TLD expansion presented a "dramatically increased opportunity for consumer fraud, distribution of malware, and proliferation of other malicious activity . . ." The Commission made five specific recommendations for ICANN to responsibly address before any new TLD applications are approved. The FTC letter is available at: www.ftc.gov/os/closings/publicltrs/111216letter-to-icann.pdf

We believe that the serious problem of cybersquatting can only be addressed if ICANN fully implements the consumer protection recommendations of the FTC. ANA recently wrote to Assistant Secretary Lawrence Strickling at the NTIA, urging the Commerce Department to ensure that ICANN adopts those recommendations. We believe it is critical that NTIA play a more proactive role in this area by providing specific timetables and benchmarks for ICANN to meet as well as specific consequences if they fall short. A copy of our letter is also attached for your information, and we would appreciate if it could be made a part of the record.

Insights | Collaboration | Advocacy

Leading the Marketing Community

January 9, 2012

The Honorable Lawrence E. Strickling
Assistant Secretary for Communications and Information
National Telecommunications and Information Administration
United States Department of Commerce
Washington, D.C. 20230

Dear Assistant Secretary Strickling:

On behalf of the Association of National Advertisers (ANA), I write to express our thoughts regarding your important letter of January 3rd to Dr. Stephen Crocker, Chairman of the Board of the Internet Corporation for Assigned Names and Numbers (ICANN). As you know, ANA has been working very closely with the Coalition for Responsible Internet Domain Oversight (CRIDO), a broad coalition of 161 global companies and industry groups which all have a significant and ongoing interest in ICANN's proposed expansion of Top Level Domain Names (TLDs).

We appreciate that your letter recognized that many organizations have very serious concerns regarding this expansion. We also recognize that your letter set forth a number of areas for improvement by ICANN that need to be addressed by ICANN. We strongly believe, however, that additional steps must be taken to ensure that the proposed expansion does not result in harm to consumers, businesses and other users of the global Internet.

In particular, we believe it is critically important for the Department to offer greater specificity about how it will be endeavoring "to be an active member of the GAC [Governmental Advisory Committee] and working with stakeholders to mitigate any unintended consequences of the new TLD program." Rather than simply urging ICANN to "consider" implementing measures to address the concerns expressed in your letter, we believe it is essential that NTIA provide specific timetables and benchmarks for ICANN to meet as well as specific consequences if they fall short. Clearly, if ICANN fails to carry out these proposed modifications and reforms, it should be found not to be in compliance with its Affirmation of Commitments obligations to operate in the "public interest."

In a December 16, 2011 letter to ICANN, for example, the Federal Trade Commission (FTC) expressed a number of specific areas for improvement by ICANN. It stated that these issues should be addressed by ICANN before any new TLD applications

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are approved; otherwise, the introduction of new TLDs could pose a significant threat to consumers and undermine consumer confidence in the Internet. In fact, the Chairman of the FTC testified before the Intellectual Property, Competition and the Internet Subcommittee of the House Judiciary Committee that the TLD roll out as presently configured could be a "potential disaster" for consumers and businesses.

In light of these risks, we urge the Department to ensure that ICANN adopts the FTC's five specific recommendations:

- Implement the new TLD program as a pilot program and substantially reduce the number of TLDs that are introduced in the first application round;
- Strengthen ICANN's contractual compliance program, and in particular by hiring additional compliance staff;
- Develop a new ongoing program to monitor consumer issues that arise during the first round of implementing the new TLD program;
- Conduct an assessment of each new proposed TLD's risk of consumer harm as part of the evaluation and approval process; and
- Improve the accuracy of Whois data, including by imposing a domain name registrant verification requirement.

The discussion in the FTC's letter about problems with the accuracy of the Whois database is particularly disturbing. The letter notes that for several years, the Commission, the GAC and numerous law enforcement agencies from around the world have all urged ICANN to improve the accuracy of that critical database. The FTC concludes that "ICANN has failed to adequately address this problem for over a decade." Indeed, it notes that last month, the ICANN-commissioned Whois Review Team issued its draft report, acknowledging the "very real truth that the current system is broken and needs to be repaired." Clearly, this poses a major danger to consumer and business security on the Internet.

Further, the FTC stated that ICANN currently is "ill-equipped" to handle the contract enforcement for the 22 existing TLDs and several hundred accredited registrars. The Commission concluded that: "the unprecedented increase in domain registries only increases the risk of a lawless frontier in which bad actors violate contractual provisions with impunity, resulting in practices that ultimately harm consumers."

Also, the FTC noted that a wide range of stakeholders have expressed concern about potential conflicts of interest on the ICANN Board and the decision to greatly expand the number of TLDs. The Commission encouraged ICANN to "complete the ongoing reviews of its conflict of interest and ethics practices and implement a revised Board conflict of interest policy before approving any new TLD applications."

In 2009, a coalition of law enforcement agencies (including the Australian Federal Police; the US Department of Justice; the US Federal Bureau of Investigation; the New Zealand Police; the Royal Canadian Mounted Police; and the United Kingdom's Serious Organized Crime Agency) issued "Law Enforcement Due Diligence Recommendations for ICANN." According to the GAC Communiqué at Dakar (dated

October 27, 2011), not one of law enforcement's twelve recommendations was adopted, and only three of the twelve have even been considered. Each of these recommendations must be implemented before any expansion is approved.

On December 13, 2011, the legal counsels of over 30 intergovernmental organizations (IGOs), including the International Monetary Fund, INTERPOL, NATO, and the UN, called on ICANN to implement appropriate policy measures to mitigate the possibility of abusive registration of names and acronyms. The letter notes that such abuse "imposes a serious enforcement burden on IGOs, which should not have to divert their public resources for this purpose." The danger cited in this letter applies beyond just the IGOs that signed the letter, and these concerns must be addressed more broadly if the expansion is not to have severe negative implications.

Similar concerns have been expressed by the Not for Profit community as well. *See* Testimony of Angela F. Williams of the YMCA before the Senate Commerce Committee (December 8, 2011) available at: http://commerce.senate.gov/public/?a=Files.Serve&File_id=56a49ede-865f-4bbe-9635-58d0b59add7b. *See* Testimony of Anjali K. Hansen of the Council of Better Business Bureaus (CBBB) before the House Energy and Commerce Committee, Subcommittee on Communications and Technology (December 14, 2011) available at: http://republicans.energycommerce.house.gov/Media/file/Hearings/Telecom/121411/Hansen.pdf. *See* National Consumers League Press Release, "ICANN's Domain Name Expansion Plan a Boon for Scam Artists" (January 6, 2012) available at: http://www.nclnet.org/newsroom/press-releases/607-ncl-icanns-domain-name-expansion-plan-a-boon-for-scam-artists-.

Moreover, within the last several weeks, numerous elected officials have communicated their widespread, bipartisan concern regarding the expansion. Specifically:

- Senator Jay Rockefeller (D-WV), the Chairman of the Senate Commerce Committee, urged implementation of the TLD expansion in a limited manner.
- Representative Robert Goodlatte (R-VA), the Chairman of the Intellectual Property Subcommittee of the House Judiciary Committee, and Representative Howard Berman (D-CA), also a member of that Subcommittee, expressed the need to delay the TLD program or limit it to a pilot project to study the potential costs and benefits.
- Senator Dianne Feinstein (D-CA), a senior member of the Senate Judiciary Committee, directed questions to FBI Director Mueller regarding the potential for Internet fraud involving ICANN's proposal.
- Representative Fred Upton (R-MI), the Chairman of the House Energy and Commerce Committee and 16 other members of that Committee, including several subcommittee chairmen, urged a delay in the expansion, and expressed concerns regarding the lack of transparency in ICANN procedures.
- Senators Amy Klobuchar (D-MN), a former state prosecutor and Kelly Ayotte (R-NH), a former state Attorney General, both now members of the Senate Commerce

Committee, urged ICANN to address public safety concerns prior to any TLD expansion.

- Senators Patrick Leahy (D-VT) and Charles Grassley (R-IA), the Chairman and Ranking Member of the Senate Judiciary Committee and Representatives Lamar Smith (R-TX) and John Conyers (D-MI), the Chairman and Ranking Member of the House Judiciary Committee, suggested that ICANN strengthen consumer and trademark holder protections in the new TLD program.

These are just some of the areas of concern and possibilities for improvement in ICANN's proposal. It now appears that, despite the nearly unanimous series of warnings that have been expressed by a broad cross-section of the entire Internet global community, ICANN unwisely appears committed to proceeding with its application launch on January 12. We do not believe that action is presently warranted or appropriate. We continue to believe that the launch could have disastrous consequences. Nonetheless, if ICANN is determined to move forward, ANA forcefully urges that, before any TLD application is approved, ICANN, at the very least, must:

- implement all of the law enforcement community's recommendations;
- address the potential for consumer harms cited by the FTC, non-profit organizations and others;
- improve procedures to protect intellectual property, as the proposed procedures are woefully inadequate;
- adopt real and meaningful methods to avoid the need for expensive and unnecessary defensive registrations; and
- implement steps to deal with "root scaling" and other technical concerns expressed by the Internet community.

These are just the most basic improvements that ICANN must implement to avoid serious harm and the "disaster" about which FTC Chairman Leibowitz warned. We urge the Department to conduct a vigorous analysis of whether ICANN should proceed with a limited phase-in of new TLDs, including an analysis of the sufficiency of protections at the second level.

We also agree with your letter that identified other issues that ICANN must resolve, and believe it is imperative that the Congress and the Internet public receive specific clarification of how the Department intends to ensure that these other issues – including improved registrar accreditations, deficiencies in Whois policies (including registrant authentication), and the sufficiency of ICANN compliance staffing levels – will be satisfied. The potential costs to Internet consumers and business of the TLD roll out could clearly be in the multi-billions of dollars, and therefore the greatest amount of clarity and specificity in this area is essential.

Unfortunately, the response of Dr. Crocker, the Chairman of ICANN, to your January 3rd letter demonstrates that ICANN remains in a state of denial about the concerns you raised. According to a January 4 article in *Bloomberg* Media, Dr. Crocker stated: ICANN appreciates that Strickling "recognizes that many of the recent concerns

expressed about the new top-level domain program are more about 'perceived' problems than actual deficiencies." So are we to believe that the specific problems expressed by the Federal Trade Commission, the OECD, the IGOs and other groups are simply "perceived" problems?

If ICANN is to maintain the trust in its ability to act for the public benefit that is critical to its continued success as a private, not-for-profit Internet governance body, there must be a mechanism to hold ICANN accountable. NTIA and fellow members of the GAC must occupy that role. Otherwise, we fear that businesses, non-profits, consumers and members of law enforcement globally will bear the heavy burden of the unintended consequences of ICANN's TLD expansion program and ICANN's very existence will be put at risk.

In your January 3rd letter to ICANN, you stated, "We think, and I am sure ICANN and its stakeholders would agree, that it would not be healthy for the expansion program if a large number of companies file defensive top-level applications when they have no interest in operating a registry. I suggest that ICANN consider taking some measures well before the application window closes to provide against this possibility."

It is in this environment and in the interests of moving forward constructively that ANA has made the following proposal to ICANN: that while it proceeds with its plan to begin accepting applications for new TLDs on January 12, that all NGOs, IGOs and commercial stakeholders concerned about protecting their brands will concurrently be given the opportunity to have those brands registered, without cost, on a temporary "Do Not Sell" list to be maintained by ICANN during the first application round. Any interested party that does not want to have their brands on the "Do Not Sell" list and would rather apply for a new TLD would be free to do so.

A copy of our letter to ICANN is attached. With the January 12th date for opening the application window rapidly approaching, we would very much appreciate a prompt statement of public support from NTIA for our proposal and a letter to ICANN indicating support from the NTIA for this "Do Not Sell" approach.

All of us involved in the Internet community have a very high investment in ensuring that the Internet continues to be a viable and useful tool for the exchange of communications, information, and the advancement of commerce. Please be assured that ANA intends to continue our efforts to ensure that any new TLD expansion furthers that objective.

Should you have any questions about the matters raised in this letter, please do not hesitate to contact me.

Sincerely,

Robert Liodice
President and CEO

About the ANA
Founded in 1910, the ANA (Association of National Advertisers) leads the marketing community by providing its members with insights, collaboration, and advocacy. ANA's membership includes 400 companies with 10,000 brands that collectively spend over $250 billion in marketing communications and advertising. The ANA strives to communicate marketing best practices, lead industry initiatives, influence industry practices, manage industry affairs, and advance, promote, and protect all advertisers and marketers. For more information, visit http://www.ana.net

cc: Bruce Andrews, Chief of Staff, U.S. Department of Commerce

Fiona Alexander, Associate Administrator, National Telecommunications and Information Administration, U.S. Department of Commerce

Vernita Harris, Deputy Associate Administrator of the Office of International Affairs, National Telecommunications and Information Administration, U.S. Department of Commerce

Suzanne Murray Radell, Senior Policy Advisor, National Telecommunications and Information Administration, U.S. Department of Commerce

Elizabeth Bacon, Telecommunications Policy Specialist, National Telecommunications and Information Administration, U.S. Department of Commerce

Cameron F. Kerry, General Counsel, U.S. Department of Commerce

Daniel K. Inouye, Chairman, Committee on Appropriations, U.S. Senate

John D. Rockefeller, Chairman, Committee on Commerce, Science and Transportation, U.S. Senate

Patrick J. Leahy, Chairman, Committee on the Judiciary, U.S. Senate

Thad Cochran, Ranking Member, Committee on Appropriations, U.S. Senate

Kay Bailey Hutchison, Ranking Member, Committee on Commerce, Science and Transportation, U.S. Senate

Charles E. Grassley, Ranking Member, Committee on the Judiciary, U.S. Senate

Barbara Mikulski, Chair, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. Senate

Al Franken, Chairman, Subcommittee on Privacy, Technology and the Law, Committee on the Judiciary, U.S. Senate

Tom Coburn, Ranking Member, Subcommittee on Privacy, Technology and the Law, Committee on the Judiciary, U.S. Senate

Ron Wyden, Chairman, Subcommittee on International Trade, Customs, and Global Competitiveness, Committee on Finance, U.S. Senate

Harold Rogers, Chairman, Committee on Appropriations, U.S. House of Representatives

Fred Upton, Chairman, Committee on Energy and Commerce, U.S. House of Representatives

Lamar Smith, Chairman, Committee on the Judiciary, U.S. House of Representatives

Norm Dicks, Ranking Member, Committee on Appropriations, U.S. House of Representatives

Henry A. Waxman, Ranking Member, Committee on Energy and Commerce, U.S. House of Representatives

John Conyers, Ranking Member, Committee on the Judiciary, U.S. House of Representatives

Bob Goodlatte, Chairman, Subcommittee on Intellectual Property, Competition and the Internet, Committee on the Judiciary, U.S. House of Representatives

Frank Wolf, Chairman, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. House of Representatives

Mel Watt, Ranking Member, Subcommittee on Intellectual Property, Competition and the Internet, Committee on the Judiciary, U.S. House of Representatives

Chaka Fattah, Ranking Member, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. House of Representatives

The Honorable Greg Walden
Chairman
House Committee on Energy and Commerce Subcommittee on Communications and Technology
2125 Rayburn House Office Building
Washington, DC 20515-6115

January 18, 2012

Dear Chairman Walden,

Thank you, Ranking Member Eshoo, and the members of the Subcommittee on Communications and Technology for hosting the hearing on "ICANN's Top-Level Domain Name Program" on December 14, 2011. I appreciated the opportunity to provide my testimony as well as your leadership in bringing attention to this issue, which is of critical importance to American businesses and Internet users.

Please find attached to this letter my responses to the questions submitted to me by Reps. Eshoo and Dingell. If I can be of additional assistance in any way, please let me know.

Sincerely,

Joshua S. Bourne
President
The Coalition Against Domain Name Abuse

cc: The Honorable Anna G. Eshoo, Ranking Member, House Committee on Energy and Commerce Subcommittee on Communications and Technology

The Honorable John D. Dingell, Member, House Committee on Energy and Commerce Subcommittee on Communications and Technology

CADNA | The Coalition Against Domain Name Abuse
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Question from the Honorable Anna G. Eshoo:
How pervasive is cybersquatting today? Has the problem intensified since the Anti-Cybersquatting Consumer Protection Act was enacted into law in 1999? If so, what changes would you propose be made to current law?

In total, there are currently over 220 million domain names in existence, with over 110 million registered in the .COM generic top-level domain (gTLD) alone. Even if we conservatively estimate that only five percent of all domain names are cybersquatted, that equates to 11 million squatted domains. Unfortunately, it is an extremely difficult task to accurately measure how many domain names are cybersquatted; it could be as high as tens of millions, but it is probably safer to estimate that the total number of cybersquatted domain names lies in the millions.

While accurately calculating the pervasiveness of cybersquatting is quite difficult, CADNA and its founding company, FairWinds Partners, have conducted various studies to quantify the impact that cybersquatting has on businesses and consumers. For example, in an extensive study that measured the cost of typosquatting (a form of cybersquatting that targets close misspellings of trademarked names), FairWinds discovered that the 250 most frequently visited websites lose a total of $364 million and 448 million impressions per year as a result of typosquatting. Of the 32,836 domain names FairWinds examined in that study, over 28,000 – or 85 percent – were identified as potentially belonging to cybersquatters.

Of course, typosquatting is only one form of cybersquatting. For another indication of how prevalent cybersquatting is, we can look to the number of squatted domain names that trademark owners recovered via the Uniform Domain-Name Dispute-Resolution Policy (UDRP). Between 2009 and 2011, trademark owners recovered more than 20,000 cybersquatted domains through the two largest UDRP providers. This figure, of course, is only a fraction of the total amount of cybersquatting because some companies choose to recover domain names through other providers, and businesses do not pursue every single cybersquatted domain name via UDRP.

Since 1999, the number of domain names registered has grown exponentially, at the same time as the average Internet user's familiarity with the online world and Internet activities has increased. Along with those developments, we have seen the number of cybersquatters in the space rise as well. In the first decade of the Internet, cybersquatting was little more than a get-rich-quick scheme pursued by opportunistic individuals operating with minimal technical sophistication. The practice was generally limited to the bad-faith registration of domain names containing well-known brand names in hopes that they would one day be sold to the trademark owner for a large sum of money. Cybersquatters took risks that sometimes yielded a payday, but this practice had not yet become a business that provided a source of steady income. In those days, the Anti-Cybersquatting Consumer Protection Act (ACPA), while not a perfect remedy, made combatting cybersquatters simpler for brand owners than it had been prior to 1999.

Since then, however, cybersquatting has evolved into an ongoing business model that does not depend on the sale of domain names for profit. Instead, cybersquatters have developed ways to monetize the traffic that their domain names receive. Nowadays, most cybersquatters only own a handful of domain names each; there are few instances of a single individuals squatting on scores of valuable domain names that infringe on a single trademark or brand.

This means that for trademark owners, the UDRP is often a more efficient and cost-effective means of recovering domain names from squatters who only own a few, or even a single, infringing domain. The cost of filing a suit under the ACPA is historically much greater than the damages brand owners are awarded if they are successful. Most find it more worthwhile to recover domain names via UDRP. Unfortunately, there are no penalties or ramifications for cybersquatters in UDRP arbitration beyond losing the domain name. As a result, cybersquatters are not sufficiently deterred from continuing to engage in cybersquatting.

There are two major changes that CADNA thinks should be made to the ACPA. The first, and perhaps most important, change should be to increase the damages that cybersquatters are forced to pay if they are found guilty of cybersquatting. If they face the possibility of having to pay stiff fines, many small-time squatters will likely drop out of the cybersquatting business because the potential payoff will no longer outweigh the potential risks, as it does now.

The other major change that CADNA proposes should be made to the ACPA is to expand the number of parties that can be held liable in instances of cybersquatting, if there is evidence that those parties were aware that cybersquatting was taking place. For example, there are certain domain name registrars that are known to be "safe havens" for cybersquatters. Expanding the liability aspect of the ACPA would allow companies to pursue these registrars and similar bad actors when instances of cybersquatting occur. However, this change is not intended to pursue good faith actors, such as those registries and registrars that comply with the UDRP and other policies.

Question from the Honorable John D. Dingell:
Cybersquatting is a problematic trend among dot-com sites. What assurances do we have that this practice will not persist or worsen under ICANN's new gTLD program? Please explain your response.

The .COM gTLD has historically experienced high levels of cybersquatting because it was one of the earliest extensions introduced for public use and remains the most popular and highly used extension in the existing domain name system. Additionally, there are basically no restrictions over who can register domain names in .COM.

The new gTLDs introduced through ICANN's program are not likely to experience the same levels of cybersquatting as .COM for two reasons: First, ICANN has enumerated multiple

mechanisms in the New gTLD Applicant Guidebook that are designed to prevent or deter cybersquatters from registering domain names containing a trademark at the second level. These mechanisms include the following (taken from ICANN's New gTLD Applicant Guidebook), among others:

- **Objections:** Third parties have the opportunity to file string confusion objections, legal rights objections, limited public interest objections, or community objections to any application during the objection filing period.
- **Trademark Clearinghouse:** The Trademark Clearinghouse is a central repository for information pertaining to the rights of trademark holders to be authenticated, stored, and disseminated. All new gTLD registries will be required to use the Trademark Clearinghouse to support their prelaunch or initial launch period rights protection mechanisms (RPMs), which are as follows:
    - **Trademark Claims Service:** New gTLD Registry Operators must provide Trademark Claims services during an initial launch period for marks in the Trademark Clearinghouse. This launch period must occur for at least the first 60 days that general registration is open.
    - **Sunrise Service:** Sunrise registration services must be offered for a minimum of 30 days during the pre-launch phase and notice must be provided to all trademark holders in the Clearinghouse if someone is seeking a sunrise registration.
- **Uniform Rapid Suspension System (URS):** Similar to the Uniform Domain-Name Dispute-Resolution Procedure (UDRP), the URS allows trademark owners to file a complaint when another party is cybersquatting on a domain that contains its trademark. If the complaint is sound, the registrar through which the cybersquatter registered the domain, locks the domain, preventing it from being transferred or altered in any way. If there is sufficient evidence that cybersquatting has occurred, the domain name will be suspended.

Secondly, I predict that over half, and potentially up to three-quarters, of all new gTLD applications will be submitted by strategic enterprises that plan to use their gTLDs for internal purposes, and will not sell second-level domain names to third parties. Because domain names in these gTLDs will only be registered and used by business units and individuals within the enterprise, no cybersquatting will occur in them.

However, despite these two conditions, there is still a chance that cybersquatting will occur in other, open-registry model new gTLDs, and businesses are concerned about the costs they will incur from having to register defensive domain names in new gTLDs. In addition to the mechanisms it has put into place in the New gTLD Program, ICANN should also consider including a requirement in the Applicant Guidebook that all new gTLD registries that choose to sell second-level domains to registrants must provide brand owners with the option to buy low-

cost blocks on their trademarks before any registration period (Sunrise or Landrush) opens. This can be offered at a lower cost than Sunrise registrations have been priced at in the past; such a precedent has been set with the blocks offered in .XXX, where the blocks were made in perpetuity for a single, non-recurring fee.

Additionally, Congress should take much-needed action to improve the ACPA so that it provides stronger deterrents against cybersquatting, as I outlined in my answer to Rep. Eshoo's question, above.

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