



22 September 2009

The Honorable Lamar Smith  
Ranking Member  
House Committee on the Judiciary

The Honorable Howard Coble  
Ranking Member  
Subcommittee on Courts and Competition Policy  
House Committee on the Judiciary

House of Representatives  
2138 Rayburn House Office Building  
Washington, D.C. 20515-6216

Dear Representative Smith and Representative Coble:

Thank you for your kind words of congratulations on my appointment as President and Chief Executive Officer of the Internet Corporation for Assigned Names and Numbers (ICANN). I am excited to take on this important challenge of working to maintain a unified, global Internet by protecting the integrity of the unique identifier system of names and addresses.

I appreciate the opportunity to respond to your letter of 15 September 2009, which asked a number of questions about: 1) the proposed new generic Top Level Domain (gTLD) processes, including: a) the work of ICANN's Implementation Recommendation Team (IRT) and b) the economic analysis surrounding new gTLDs; and 2) the need for a permanent instrument that memorializes the relationship between the United States Government and ICANN. I will address these issues below.

## **ICANN Policy for New Top-Level Domains**

As your letter indicates, ICANN is working on ways to increase competition and innovation at the top-level of the Domain Name System (DNS). This is an ICANN policy, one that the United States government encouraged from the time of ICANN's formation eleven years ago. We fully recognize that there are remaining questions on the best path to implement this effort to liberalize the gTLD marketplace.

The implementation plan that ICANN is formulating results from a bottom-up, multi-year, multi-stakeholder policy process that proposed the creation of new gTLDs. The new gTLD policy development is the very type of process that the United States government envisioned, supported and encouraged through three presidential administrations.

ICANN staff, at the direction of its Board of Directors, has been working through various stages of proposing implementation of the new gTLD policy, which has involved detailed public consultation at many levels and via many forums. The comments on our proposals, our analysis of those comments and our revised plans for implementation are thousands of pages of consideration and reconsideration. The concerns of the intellectual property interests that you set out in your letter are very important to us within that process. ICANN takes these issues very seriously.

Let me directly address your questions.

**Q1. Which of recommendations of the IRT does ICANN plan to implement? What is the justification for not publicly announcing such decisions prior to the September 30, 2009 scheduled expiration of the JPA and instead deferring such public notice and review until the publication of the next version of the Draft Applicant Guidebook? If implemented, how will the recommendations put forth by the IRT serve to reduce or eliminate the need for defensive registrations? Will any of the recommendations prevent price gouging by registries or registrars?**

As you know, the IRT was formed at the ICANN Board of Director's direction by ICANN's Intellectual Property Constituency to provide solutions for potential risks to trademark holders in the implementation of new gTLDs. The IRT, as well as representatives from other stakeholder groups, have responded to ICANN's calls for proposed solutions to the overarching issue of trademark protections in new gTLDs.

The Board has not yet formally considered the proposals from the IRT. ICANN held public consultations on the proposals in New York, London, Sydney, Hong Kong, and Abu Dhabi. Those consultations have taken a good portion of time. There is no link to the conclusion of the JPA.

After this extensive consultation, ICANN is recommending the implementation of versions of the IRT's recommendations, such as a post-delegation dispute resolution procedure and a "thick Whois" requirement. In order to address concerns that some of the recommended solutions might impinge on existing policies such as the UDRP, or could themselves be the subject of policy development, ICANN may ask the GNSO to begin an expedited review of the recommended solutions in an attempt to reach consensus on an optimal path for launching new gTLDs with robust mechanisms to ensure the protection of legal rights.

ICANN's new gTLD policy includes a provision requiring that new gTLDs "must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law." Accordingly, ICANN will, to the extent possible, protect trademark holders from abusive registrations and from the need for defensive registrations in new gTLDs, but no final decision has been made yet on the exact mechanisms that will be employed.

The New gTLD Program is being designed to with a goal of reducing or eliminating the need for businesses to register domains defensively. One of the key features of protection measures being discussed is a "rapid suspension" system for freezing and suspending clearly infringing registrations in a timely and economical basis, consistent with procedures to ensure fairness. A mechanism for quickly suspending clearly infringing registrations will reduce the incentive for cybersquatters to engage in bad-faith registrations, thereby reducing or eliminating the pressure on organizations to make defensive registrations. A reduction in the perceived need to register names defensively will also have the effect of reducing the perceived power of new gTLD registries to charge organizations artificially inflated prices for registrations in order to avoid becoming the target of opportunistic cybersquatters.

**Q2. Does ICANN intend to carry out a comprehensive, empirical economic study to examine the impact on competition that additional gTLDs may have? If not, what confidence can the public have that the expansion of gTLDs will improve, rather than hinder, competition? Assuming the rollout goes forward, what steps will ICANN take to monitor the impact on competition in the future?**

ICANN has commissioned three separate economic reports during the implementation phase of the New gTLD Program. You can see these reports at the ICANN website at <http://www.icann.org/en/topics/new-gtlds/economic-analysis-en.htm> . They have all recognized that the fundamental benefits of competition that apply in almost all other markets will also benefit Internet users. Those benefits include enhanced service offerings, competition, innovation and choice in the domain name market, while other costs to registrants and overall economic modeling need further analysis. I would like to first review some of the background on economic analysis work done to date, and then review possible actions to accommodate concerns that still exist.

Since the drafting of the White Paper, it has been a fundamental assumption that increasing the number of gTLDs will increase competition. The House Committee on Energy and Commerce relied upon this assumption when, in 2001, it initiated a hearing regarding potential detrimental effects to competition for ICANN's selection of only seven new TLDs out of 44 applicants for over 200 different TLDs in its early Proof of Concept round.

As ICANN has moved further along on the path to implementation, and as the documentation has become more specific, so have the criticisms attacking both the collective assumption that increasing the number of gTLDs will increase competition, as well as the findings within the economic reports. This is not a surprise in a limited-resource environment such as the availability of only 21 generic top level domains.

Any resultant delay of the launch of the New gTLD Program will inhibit competition in the use of generic, non-trademarked terms, according to Dr. Dennis 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, The potential innovations and uses for the new gTLD namespace will be stifled if limitations to entry are imposed.

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

Even with what appears to be the compelling benefits of competition, ICANN's commitment to open and transparent processes requires further action on ICANN's part to address the questions that have been raised surrounding the sufficiency of the economic studies commissioned to date. Accordingly, ICANN will retain economists to review and summarize work to date regarding the costs and benefits of new gTLDs, putting that work into the context of the questions some have said remain open, and then evaluate whether additional study is required.

**Q3: Do you recognize a need for and support the establishment of a permanent instrument that memorializes the relationship between ICANN and the U.S. Government? If not, what are your current thoughts on an extension of the JPA prior to its expiration on September 30, 2009? What key elements do you think should be incorporated into such a permanent or temporary agreement? What assurances do citizens of the United States have that ICANN will effectively meet the goals set out in the JPA if it or a successor agreement is not formally extended?**

The conclusion of the Joint Project Arrangement (JPA) between the National Telecommunications and Information Agency (NTIA) of the United States Department of Commerce (DoC) and ICANN, which is set for 30 September 2009, is the culmination of

almost eleven years of support for ICANN's organization building by the DoC. It is important to note that the conclusion of the JPA is not a termination of ICANN's relationship with the United States Government nor is ICANN an advocate of that possibility.

I am in discussions with the NTIA to establish a long-standing relationship to accommodate principles including the beliefs that ICANN should remain a nonprofit corporation based in the United States, and should retain an ongoing focus on accountability and transparency. ICANN has entered into numerous long-term contractual agreements with registries, registrars, country code operators and other parties. In fulfilling its role in coordinating this piece of the DNS, ICANN must be a permanent institution.

Accordingly, ICANN seeks to have a long term, formal relationship with the United States Government and also seeks to build long-term relationships with other countries and contractual partners as well.

ICANN's long term, developing relationship with the United States government is part of ICANN's evolution to strengthen its processes, enhance its accountability to all stakeholders, and maintain the security and stability of the DNS while bringing innovation and competition to Internet users world wide.

#### **GAC Letter of 18 August 2009**

As you reference in your letter, on 18 August 2009 ICANN's Governmental Advisory Committee (GAC) sent ICANN a letter with comments on addressing version 2 of the Draft Applicant Guidebook (DAG). Peter Dengate Thrush, the Chair of ICANN's Board of Directors, will be responding to the GAC by the end of this week. We will forward a copy of Mr. Thrush's response to the GAC letter when it is available.

#### **Conclusion**

The new gTLD program is being managed on its own timetable, which is not dependent on the current discussions concerning the transition from the current Joint Project Agreement between ICANN and the U.S. Department of Commerce.

For additional information on the history of ICANN's efforts on new gTLDs, and other issues, please refer to the recently submitted "Testimony of Doug Brent" (ICANN's COO), who is scheduled to appear before the United States House Committee on the Judiciary, Subcommittee on Courts and Competition, on Wednesday, September 23, 2009.

Thanks so much for your expressed concern and interest, and your request that we take the important inputs from GAC, the intellectual property interests and others into

account. I hope that this information has helped you to understand the seriousness and caution with which ICANN approaches these endeavors. Please feel free to contact me if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Rod Beckstrom", written over a horizontal dotted line.

Rod A. Beckstrom  
President and CEO

ICANN  
*Addressing the Global Internet*