The Internet Corporation for Assigned Names and Numbers

2 February 2012

The Honorable Pat Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
House of Representatives
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
House of Representatives
Washington, DC 20515

Dear Chairman Leahy, Ranking Member Grassley, Chairman Smith and Ranking Member Conyers:

Thank you for your letter of December 27, 2011 regarding ICANN's New Generic Top-Level Domain Program (New gTLD Program). While the application window for new gTLDs opened on January 12, ICANN continues to carefully consider all viewpoints that have been raised regarding the program and the scope of protections offered.

The New gTLD Program is the result of careful and extensive community deliberations over six years. There is no aspect of the Program that has not been the subject of discussion, debate and compromise. The opening of the application window does not represent the end of work on the Program by ICANN and the multistakeholder community. As ICANN has repeatedly stated, we will continue to provide the forum in which all stakeholders can discuss and, to the extent necessary, develop, further refinements to the New gTLD Program.

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The program has been designed to benefit the two billion (and growing) Internet users around the globe through increased competition, choice and innovation. It is also designed to provide a secure, stable marketplace through the implementation of enhanced rights protection mechanisms, malicious conduct mitigation measures and other consumer protections. The New gTLD Program sets a new, more secure baseline for consumers, businesses, registry operators, and all others involved in the Internet.

The New gTLD Program is Designed to Protect Against Malicious Conduct and Offer Trademark Protections

In September 2009 and in May 2011, the House Committee on the Judiciary, Subcommittee on Intellectual Property, Competition and the Internet held two hearings regarding the New gTLD Program. ICANN's witnesses, former COO Doug Brent (September 2009) and SVP Kurt Pritz (May 2011), provided detailed testimony regarding the formation of rights protection mechanisms, as well as measures designed to mitigate malicious conduct and create a safer environment in the new gTLDs.

ICANN's work with the community was deliberate and exhaustive. Ten independent expert working groups were convened, 59 explanatory memoranda and independent reports were posted, thousands of comments were received in no fewer than 47 extended public comment periods, and 1400 pages of comment summary and analysis were provided by ICANN. This work informed the development of eight versions of the Applicant Guidebook, which sets the rules for the first round of the New gTLD Program.

The New gTLD Program today includes significant protections beyond those that exist in current TLDs. These include new mandatory intellectual property rights protection mechanisms and heightened measures to mitigate against malicious conduct. Below is a summary of some of these new protections:[1]

- **New Trademark protections:**
    - Formal objection and dispute resolution processes that enable trademark owners to block registration of infringing top-level domains;
    - 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;

[1] A detailed description of these protections appears in the New gTLD Application Guidebook, and in the factsheets on Trademark Protections, available at http://newgtlds.icann.org.

- Mandatory Sunrise *and* Trademark Claims processes for *all* new gTLDs that, respectively, give trademark holders first rights to a second-level domain name, and provide warning notices to those attempting to register trademarked names;
- 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 under which rights holders can assert domain name abuse claims directly against TLD registry operators; ICANN may impose sanctions on complicit registries including shutting them down.

- **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 with reckless disregard to their obligations 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 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); and
  - 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.

The extensive debate and deliberation that led to the adoption of these protections demonstrates that the prevention of online fraud and abuse has long been a strategic priority in development of the New gTLD Program. By adopting the protections outlined above, ICANN – and the ICANN multistakeholder community –made the prevention of online fraud and abuse a cornerstone of the New gTLD Program.

Trademark Protections Were Part of Community Debate

There are some in the community that wish for ICANN to go further with the protections developed within the program, including those who suggest that the Trademark Clearinghouse should be expanded beyond the exact match to a trademark, as well as the requesting an extension of the time for the mandatory Trademark Claims service. These issues were both areas of extensive debate among the community. The recommendations as implemented were developed through two community expert groups. The Implementation Recommendation Team, comprised of 18 intellectual property experts from around the world, held several face-to-face meetings and innumerable conference calls and tested drafts over hundreds of emails to develop the core, mandatory rights protection mechanisms. Building on that, the Special Trademark Issues Team, was comprised of representatives of ICANN's Stakeholder Groups representing: intellectual property, business, Internet service providers, non-commercial interests, and gTLD registries and registrars.

ICANN's Governmental Advisory Committee (GAC) is one proponent of the heightened protections mentioned in your letter. These government representatives met directly with the ICANN Board on several occasions. The result was, in many instances, to enhance the protections designed by the intellectual property experts. After this period of consultation, the governments, in their communiqué, agreed that the New gTLD Program could proceed with the existing consensus-based protections, conditioned on ICANN's undertaking studies of a post-launch review on the feasibility of enhancing trademark protections.

Some trademark holders continue to voice concern that the New gTLD Program does not offer sufficient protections to reduce the need to submit defensive applications for top-level domains. Detailed discussions with intellectual property experts that participate actively in ICANN policy development indicate that those experts who are knowledgeable of the TLD marketplace are most comfortable with protections for top-level names. In regards to the perceived need for defensive registrations at the top-level by trademark holders, ICANN has 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. A copy of ICANN's letter to Assistant Secretary Strickling is attached to this letter.

The New gTLD Program Allows for Higher Security TLDs

The concerns stated regarding TLDs for trusted industries are well taken. Within the New gTLD Program development, an expert group was convened – including members of BITS (the policy division of The Financial Services Roundtable) and others – entitled the High Security Zone TLD Working Group to create standards for this type of registry.

The *Applicant Guidebook* specifically references the work of the HSTLD Working group, and notes ICANN's support for independent efforts to develop high security TLD designations. In addition, the *Applicant Guidebook*, at Evaluation question 30 (page A-24 of Module 2), notes that security levels must be appropriate for the use and level of trust associated with the TLD string, such as financial services oriented TLDs and "other strings with exception potential to cause harm to consumers." Applicants are also given incentive to incorporate security levels that exceed the baseline requirements. The gTLD criteria also references work independently published by the American Bankers Association and The Financial Services Roundtable as an illustrative example of how the criteria for a high-security TLD could be satisfied. In the event that a string is applied for and does not include appropriate security measures, that could serve as the basis for objection or an issuance of a GAC Early Warning regarding the string.

The New gTLD Program Allows for Consideration of Potential for Consumer Harm

The concerns raised within your letter regarding the evaluation of consumer risks associated with potential new TLDs are similar to the issues raised by the Federal Trade Commission in December 2011. As ICANN indicated in its letter to Chairman Leibowitz and his fellow Commissioners, the New gTLD Program contains signification safeguards for the assessment of all proposed new TLDs. The new, specific consumer protections in the new gTLD program were developed by expert representatives of the Anti-Phishing Working Group, Registry Internet Safety Group and FIRST. In addition, governments,

through ICANN, may provide early warning notices regarding potential sensitivities with an application, as well as to provide the ICANN Board with advice to disqualify specific applications. This advice can include concerns of the potential for consumer harm.

Shortly following the close of the application window, ICANN will publish a list of all of the applied-for TLDs along with public portions of each application. With this information, governments and stakeholders in general will be able to determine whether to file comments or invoke one of the objection processes discussed earlier. Through the well-defined objection processes, the risks of user confusion and the introduction of a string that infringes on the legal rights of another are both mitigated. Finally, the stringent background check for applicants reduce the likelihood that persons that already have a history of malfeasance would pass through the application process.

A copy of ICANN's January 10, 2012 letter to the FTC is provided for further information.

New gTLD Registry Costs are Carefully Calculated

Your letter references the fact that TLD costs might cost too high for small organizations to apply for and operate: the evaluation fee is $185,000 and operating costs of a TLD might be several times that. There are several factors that play into this discussion:

- The evaluation fees are calculated on a cost recovery basis. In other sections of your letter, you urge that we take precautions to protect consumer and trademark interests. A thorough evaluation process that tests the applicant and the application several ways serves those interests.
- The evaluation fee itself is a bar to potential wrongdoing at the top-level. In today's environment, second-level domain names are available for $10. Wrongdoers easily leave them behind when the site is exposed. The higher evaluation fee for top-level names in itself will discourage abuse.
- ICANN has put into place a limited applicant support program and provided a seed fund of $2MM to reduce application fees for qualifying applicants. Additional funds are being solicited. Non-financial support mechanisms are also provided.
- The new registries will be operating important pieces of Internet infrastructure. This duty cannot be taken lightly and *does* require sufficient investment capability.
- In the end, the New gTLD Program is intended to benefit the billions of Internet users (and not just the hundreds of potential applicants) by providing business opportunity, language and cultural diversity, protections for consumers and property, and choice for Internet users. The program is focused on them.

ICANN's Work Continues

As noted above, ICANN's work on the introduction of new gTLDs does not stop with the opening of the application window. 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.

The attached letters to the FTC and Assistant Secretary Strickling also includes additional information on how ICANN is working to meet its commitments to strengthen its contractual compliance work, as well as how ICANN is working to address law enforcement recommendations targeted to increase Whois accuracy. Of particular note, 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. The negotiation includes discussion of 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 law enforcement worldwide.

As ICANN moves forward with the evaluation of applications, ICANN will continue to remain open to all interested stakeholders. This is the hallmark of the bottom-up, multistakeholder model that is ICANN. Thank you for your continued interest in ICANN and the new gTLD program.

Best regards,

Rod Beckstrom
President and CEO

The Internet Corporation for Assigned Names and Numbers

ICANN

11 January 2012

Lawrence E. Strickling
Assistant Secretary for Communications and Information
United States Department of Commerce
Washington, D.C. 20230

RE: ICANN's New gTLD Program

Dear Assistant Secretary Strickling:

Thank you for your letter of 3 January 2012 regarding the new generic top-level domain program. We appreciate the NTIA's continued contributions and involvement in ICANN, and particularly your commitment to preserve the multi-stakeholder model and the outcomes of this six-year multi-stakeholder process that has led to the opportunity for new generic top-level domains.

We will continue to review possible improvements to the program. We appreciate your concerns regarding the perceived need for defensive registrations at the top-level by trademark holders. Accordingly, we will again solicit information as expeditiously as possible from the intellectual property community, and submit any new proposals or recommendations for evaluation and comment from the ICANN stakeholder community.

We will also continue in our efforts to implement ICANN's commitments to law enforcement and enhancing consumer protection, particularly in the areas of strengthening the Registrar Accreditation Agreement, improving WHOIS accuracy, and establishing strong contractual compliance capability in the new, expanded environment.

The Perceived Need for Defensive Registrations and the Education of Stakeholders

We are very interested in ensuring that trademark owners are fully aware of the options and mechanisms available to them. When top-level protections were developed, the team of intellectual property experts that were engaged carefully balanced the effects of different options and then crafted the existing set of protections.

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Over the past four months, ICANN has delivered on a global communications strategy that has generated thousands of media articles around the world. In more than 50 events in 38 countries, ICANN's CEO, Board and staff have given many presentations that included detailed descriptions of trademark and consumer protections.

As you know, full details of the new gTLD program can be found on ICANN's dedicated microsite, in many published materials available in the six UN languages, and in posted recordings of past meetings.

In response to your comments suggesting the need for further U.S.-based outreach, we have undertaken an intensified communications effort in Washington and New York that has produced informative stories in the *Associated Press, Wall Street Journal, Ad Week, Wired, AFP, Nightly Business Report, CNN, Reuters, Politico, USA Today* and *National Journal*, among others. In each case, detailed descriptions of the program's protections have been emphasized, and many of the articles feature these points. This effort is ongoing.

We understand the importance of continuing this education campaign and will continue to reach out to stakeholders in the U.S. and internationally. For example, on 11 January, ICANN is hosting a panel discussion in Washington that will address trademark and rights protection issues. As the application window is opened and trademark holders are determining their strategy for taking advantage of this new opportunity, we are committed to increasing the education effort and will develop plans to directly contact as many trademark owners as possible, including through informational events. We do not see this as a significant change in our communications strategy.

We believe that our recent efforts have made significant progress in addressing the concerns raised in your letter regarding the need for filing "defensive" applications for new gTLDs. As you know, the New gTLD Program allows for objections to be brought against applications for strings that infringe on the legal rights of others. Many program features combine to discourage applications that might seek to gain through rights infringement: the relatively high fee, the rigorous background checks and evaluation process, stringent technical and business requirements for new registries, the availability of objection processes, and trademark protections in second-level registrations. All applied-for TLDs will be published to allow rights-holders to avail themselves of the objection and other protection mechanisms. With these protections, the ICANN community has crafted a program to encourage applications only from those that are interested in running a new gTLD registry. ICANN will continue to take steps to make sure these protections are fully communicated as, and after, the application window opens.

Second-level protections: Much of the work regarding the New gTLD Program anticipates a range of potential ideas and innovation. We do not know all of the TLD names that will be applied for in this first round, nor the additional protections that applicants themselves may offer. As you state, upon the close of the application window and the public posting of the strings, we will all have a better understanding of what this expanded gTLD landscape will look like. We will understand the size, and whether there has to be a staged rollout of new gTLDs based on commitments made regarding the rate of entry into the root zone and the batching of applications. We thank the NTIA for its additional commitment to coordinate with stakeholders and the other members of the Governmental Advisory Committee (GAC) as the application window closes regarding the scope of the applied-for strings. ICANN commits to working with the GAC and the community in order to respond as appropriate to address unintended effects of the introduction of New gTLDs.

Law Enforcement Recommendations & Consumer Protections

Your letter addresses three important areas of work for ICANN to undertake that will enhance the consumer protections available as new gTLDs roll out: (1) strengthening the Registrar Accreditation Agreement to meet the recommendations of law enforcement; (2) WHOIS accuracy; and (3) continued growth of ICANN's Contractual Compliance Team. ICANN takes each of these three items very seriously, and has work underway in each of these three areas.

RAA Negotiations

Active negotiations are underway with the accredited registrars with which ICANN currently has a contractual relationship. The negotiations are focused on amendments to the Registrar Accreditation Agreement (RAA), and the form of agreement that governs the relationship with all newly-accredited registrars. ICANN has committed to releasing a series of amendments addressing the recommendations of law enforcement, including provisions related to WHOIS verification, requiring registrars to maintain points of contact for reporting abuse, reseller obligations, heightened obligations relating to privacy/proxy service, increased compliance mechanisms, and others. The proposed changes will be posted prior to ICANN's Meeting in March 2012 for feedback from ICANN's multi-stakeholder community.

As part of ICANN's negotiation with the accredited registrars on RAA amendments to meet law enforcement requests, 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 law enforcement worldwide.

ICANN cannot currently require verification or authentication at the time of registration by an accredited registrar of a new second-level domain name applicant. ICANN expects that the RAA will incorporate – for the first time – Registrar commitments to verify WHOIS data. ICANN is actively considering incentives for Registrars to adopt the anticipated amendments to the RAA prior to the rollout of the first TLD in 2013.

ICANN is focused on WHOIS improvements as a cornerstone of the new agreements. As one outcome of the negotiations, ICANN and the accredited gTLD registrar community are planning an upcoming public forum to discuss available tools for WHOIS verification and authentication. The NTIA's participation in this forum, and the participation of other interested parties throughout the world, will be welcomed and encouraged.

WHOIS Improvements

ICANN shares the NTIA's concerns regarding WHOIS data. ICANN takes this very seriously. The current WHOIS system is hampered by an old prototype and little consensus on policy changes.[1] The history of ICANN's work on this issue shows that WHOIS has been a constant challenge for the ICANN community. ICANN is actively working to enhance WHOIS. Improving the environment for law enforcement and consumers requires improving WHOIS accuracy and access to data.

In addition to the RAA-related work described above, additional work within ICANN on WHOIS issues includes:

ICANN has dedicated substantial resources to the study of 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.[2] 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 committed to take action on the final recommendations of the WHOIS Review Team convened under the Affirmation of Commitments (AoC). The Review

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1 A comprehensive listing of the past work regarding WHOISWHOIS is

2 The WHOISWHOIS studies are identified at http://gnso.icann.org/issues/WHOISWHOIS/studies.

Team's draft recommendations are now the subject of a public comment proceeding, and the Board is committed act on the recommendations as agreed under the AoC.

ICANN's WHOIS Data Problem Reporting System has been significantly improved twice in recent years to 1) assist registrars in carrying out their responsibility to investigate WHOIS data inaccuracy claims and 2) provide a better mechanism for tracking investigation and response.

In response to enforcement efforts, ICANN's accredited registrars are now at 100% compliance with their obligation to send out WHOIS Data Reminders to their customers.

ICANN staff members have developed and recommended a solution for internationalized registration data (to ensure clarity of WHOIS information using characters other than English). That proposal is being considered for adoption as a standard by the Internet Engineering Task Force (IETF).

Finally, the new gTLD program facilitates access to WHOIS related data. First the program requires maintenance of a "thick" WHOIS database for all new TLD registries. 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 more information about registrants more easily available – making it easier to 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. Internet security experts also recommended this improvement.

ICANN will continue working with the community to implement additional enhancements as borne out through work, studies and further recommendations.

Enhancement of Contractual Compliance

ICANN has committed to expanding its Contractual Compliance team in anticipation of the 2013 rollout of the first new TLDs, and has continued its expansion of the department to meet that commitment. ICANN has also grown the related functions and departments that support the contractual compliance function. In 2011, a new

Senior Director was hired, as well as three full-time staff members.[3] Active recruitment for three new positions is currently underway and the positions are posted on ICANN's career page.[4] The Contractual Compliance team now has members staffed in multiple ICANN offices, with fluency in multiple languages. ICANN will continue to expand this function in the coming ICANN fiscal budget year. ICANN is actively engaged in enhancing the "culture of compliance" around ICANN's key contractual relationships.

ICANN's Management is committed to vigorous enforcement of both registry and registrar contracts. The team is working on the development of better and more automated systems, as well as enhancing internal tracking and reporting. Steps are already underway regarding the centralization and automation of the complaint process. As seen with the team's work on the WHOIS Data Problem Reporting Service, ICANN has the demonstrated ability to improve and automate its compliance systems.

This larger, more proactive approach by ICANN, combined with the uniform provisions of the proposed new gTLD registry contracts and the stronger enforcement tools that will be available under the improved RAA, will all assist in holding all contracted parties to their commitments.

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[3] Today's Contractual Compliance team has four additional members than it did a year ago – nearly doubling in size.

[4] See ICANN's Career listing page, at www.ICANN.jobs

Conclusion

Thank you for the NTIA's continued dedication and support for the multi-stakeholder model and the unified, global Internet. ICANN is committed to meeting the demands of the multi-stakeholder model through its responsible stewardship of the New gTLD Program, just one part of ICANN's role as the steward of the globally-interoperable DNS. The concerns raised in your letter are shared by ICANN, and we look forward to working with the NTIA and all interested stakeholders around the globe further on these issues.

Sincerely,

Rod Beckstrom
President and Chief Executive Officer

The Internet Corporation for Assigned Names and Numbers

ICANN

10 January 2012

Chairman Jon Leibowitz
Commissioner J. Thomas Rosch
Commissioner Edith Ramirez
Commissioner Julie Brill
Federal Trade Commission
Washington, D.C. 20580

Re: ICANN's New gTLD Program

Dear Chairman Leibowitz and Commissioners Rosch, Ramirez and Brill:

Thank you for your letter of 16 December 2011 regarding ICANN's new generic top-level domain name program (New gTLD Program or Program). We appreciate the perspective that you provide to ICANN in your letter and note the important contributions that the FTC brings to ICANN's base of information and processes. That perspective has been and will continue to be important to us in performing ICANN's technical coordination role – especially in providing protections to consumers and users of the Internet.

The New gTLD Program is the product of ICANN's mandate to: act in the global public interest, coordinate the global Internet's systems of unique identifiers, and in particular, ensure the stable and secure operation of the Internet's unique identifier systems. ICANN has addressed the overarching issues identified for the rollout of new TLDs through careful operational planning and the six-year long, multistakeholder process to design the New gTLD Program.

The program has been designed to benefit the billions of Internet users around the globe 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.

New gTLDs Include Protections that Are Not Required in the 300 TLDs Already in the Domain Name System

The domain name system (DNS) today includes over 300 TLDs: 249 ccTLDs, 30 IDN ccTLDs, and 21 gTLDs. None of those 300 existing TLDs are required to include the standard protections that new TLDs must offer.

The FTC's concerns about the expansion of the DNS and worldwide accessibility to the Internet[1] are actually mitigated through the launch of these new TLDs – rather than magnified as suggested in your letter.

ICANN strongly expects that TLDs approved through the New gTLD Program will bring about increased competition while resulting in more secure environments for consumers. New measures to mitigate malicious conduct and increase security and stability include:

- 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;

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1 To the extent that the FTC's concerns about the expansion of the DNS are in relation to phishing attacks, phishing attacks are predominately made through email. The number of attacks will not go up because there are more TLDs. Phishing attacks also require a domain name registration, but new, smaller TLDs incorporating the heightened protections are not the place for those making attacks to "hide." Phishing attacks are proportional to the number of wrongdoers and registrants, not the number of TLDs.

- 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.

The protections now in place are a result of substantive consultations across ICANN's stakeholders. The Governmental Advisory Committee (GAC), made up of over 110 of the world's governments, has been deeply involved in the development of the New gTLD Program. As noted by Assistant Secretary of Commerce Lawrence Strickling, ICANN worked with the GAC to be sure that government concerns were addressed in the program.[2]

ICANN's Work Does Not Stop With the January 12, 2012 Opening of The Application Window

ICANN's multistakeholder community will continue to work on issues identified by the FTC and others to enhance the security and stability of the DNS. Some examples of this work include:

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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.

- 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. The negotiation includes substantial and unprecedented steps to improve the accuracy of Whois data.
- The issue of improvements to Whois and Whois accuracy are under discussion in many areas of ICANN. As you know, there is tension in this area between those seeking access to data and privacy advocates.[3] In addition to the work of the Whois Review Team arising out of the Affirmation of Commitments, there are five separate Whois-related studies underway, including issues on misuse, registrant identification and privacy/proxy services.[4] There are also two active GNSO Working Groups on Whois-related issues.[5]
- The Contractual Compliance team is growing, and the ramp up in activities will meet the demands of the rollout of new gTLDs in 2013. ICANN's commitment in this area cannot be overstated.
- ICANN has committed to review the impacts of the rollout of the New gTLD Program in accordance with the Affirmation of Commitments, as well as undertaking a post-delegation economic study on the results of the first set of new gTLDs, and a post-launch study on the effectiveness of the new trademark protections and any effects on root zone operations.

Improvement of Whois Services and Data Is An Ongoing Focus

To reiterate, ICANN shares the FTC's concerns regarding Whois data. ICANN takes this very seriously. It is important to recall that the Whois system that exists today has been

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3 A comprehensive listing of the past work regarding Whois is available at http://gnso.icann.org/issues/whois/policies. Substantial Whois work has been ongoing over the past ten years.

4 The Whois studies are identified at http://gnso.icann.org/issues/whois/studies.

5 Information on the work of Whois Service Requirements – Survey Drafting Group and the Internationalized Registration Data Working Group is available at http://gnso.icann.org/issues/whois/policies.

hampered by an old prototype and little consensus on policy changes.[6] The history of ICANN's work on this issue shows that Whois has been a constant challenge for the ICANN community. ICANN is actively working to enhance Whois. Improving the environment for law enforcement and consumers requires improving Whois accuracy and access to data.

As part of ICANN's negotiation with its accredited registrars on RAA amendments to meet law enforcement requests, ICANN is taking a strong stand in regard to issues relating to the verification of Whois data, and expects its accredited registrars to take action to meet the demands of FTC and law enforcement worldwide. ICANN expects that the RAA will incorporate – for the first time – Registrar commitments to verify Whois data. ICANN is actively considering incentives for Registrars to adopt the anticipated amendments to the RAA prior to the rollout of the first TLD in 2013.

ICANN has dedicated substantial resources to the study of Whois data-related issues. As discussed above, there are five separate studies currently underway regarding Whois services. These studies including issues on misuse, registrant identification and privacy/proxy services.[7] 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 committed to take action on 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.

ICANN's Whois Data Problem Reporting System has been significantly improved twice in recent years to: (1) assist registrars in carrying out their responsibility to investigate Whois data inaccuracy claims and (2) provide a better mechanism for tracking investigation and response.

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6 A comprehensive listing of the past work regarding Whois is available at http://gnso.icann.org/issues/whois/policies.

7 The Whois studies are identified at http://gnso.icann.org/issues/whois/studies.

In response to enforcement efforts, ICANN's accredited registrars are now at nearly 100% compliance with their obligation to send out Whois Data Reminders to their customers.

ICANN staff members have developed and recommended a solution for internationalized registration data (to ensure clarity of Whois information using characters other than English). That proposal is being considered for adoption as a standard by the Internet Engineering Task Force (IETF).

Finally, the New gTLD Program facilitates access to Whois related data. First the program requires maintenance of a "thick" Whois database for all new TLD registries. 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 more information about registrants more easily available – making it easier to combat malicious conduct where it occurs. In addition, the 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. Internet security experts also recommended this improvement.

These examples above demonstrate that ICANN is responding to the calls from the FTC and law enforcement agencies around the world regarding Whois data, and ICANN will continue working with the community to implement additional enhancements as borne out through work, studies and further recommendations.

FTC's Proposed Improvements to the New gTLD Program

Along with the general call for improved Whois accuracy, the FTC identified four additional items for ICANN consideration prior to approving new gTLD applications. ICANN responds to the four items below.[8]

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[8] ICANN notes that the FTC calls for the implementation of a revised Board Conflicts of Interest Policy prior to approving any New gTLD Applications. ICANN is committed to completing its reviews of its Conflicts of Interest and ethical practices as expeditiously as possible. The Board Member Rules on Conflicts of Interest for New gTLDs, approved on 8 December 2011

The FTC's recommended changes are largely based upon proposals that are not new. They have been made and considered through the six-year multistakeholder process. Many of the recommendations by law enforcement, consumer protection groups and intellectual property representatives were adopted and are part of the process. To the extent that the proposals were not incorporated into the Applicant Guidebook, that is a reflection of the multistakeholder process. That some protections were not adopted in full does not mean that ICANN "failed to respond effectively" to those concerns or warrant delay of the approval of new TLDs. As Assistant Secretary Strickling cautioned:

> [W]e 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.]

1. Pilot Programs Have Been Conducted On the Introduction of New TLDs

ICANN has demonstrated high competency in overseeing the coordination of today's DNS comprised of 300 TLDs.

(http://www.icann.org/en/minutes/resolutions-08dec11-en.htm#4) represents part of the gold standard that ICANN is working to establish in this area.

ICANN has operated three pilot programs on the introduction of new TLDs into the DNS. In 2000, ICANN launched a "Proof of Concept" round, through which seven new TLDs were selected out of 44 applicants (proposing over 200 different potential TLDs). In 2004, ICANN accepted applications for Sponsored Top-Level Domains (sTLDs), specialized TLDs that are tied to defined sponsor communities (such as .CAT for the Catalan-speaking community). Finally, ICANN launched the IDN ccTLD Fast Track process in 2009 that, to date had resulted in the delegation of 30 IDN TLDs.

Through these pilot rounds, important lessons were learned. First, new TLDs can safely be added to the DNS. Second, the imposition of artificial restrictions on the rounds, such as the numerical restriction imposed in 2000 and the type-restriction imposed in 2004 place ICANN in the position of picking winners and losers, as opposed to fulfilling its mission of facilitating competition in the DNS. Artificial restrictions also create incentives for applicants to work to fit their TLD ideas into categories that may not be a true fit. The outcomes of the pilot rounds also helped inform the heightened protections in place for the New gTLD Program. The pilot programs informed the creation of independent dispute resolution programs that anticipate points of contention and provide paths for addressing potential abuses, controversies and sensitivities. The Fast Track program (and the IDN test bed before that) demonstrates that IDNs can be safely delegated into the root zone. These lessons learned will enable the realization of anticipated benefit in a safer environment.

The New gTLD Program will be implemented in a measured, limited manner. There is a 90-day application window, followed by a stringent evaluation process through which ICANN's expert evaluation panels will evaluate registry abilities to meet the high technical and operational requirements. The rollout of new gTLDs will be distributed over time – no TLDs are expected to be operational prior to early 2013; delegations of additional TLDs will be distributed after that, as the applications pass through the evaluation and dispute resolution processes. The imposition of otherwise artificial limitations on today's New gTLD Program would only create incentives for the bad-acting applicants to seek advantages in a subjective evaluation process. The Program in place today allows applicants to be evaluated against objective standards.

2. ICANN's Contractual Compliance Function Is On Plan For Expansion

ICANN is committed to expanding its Contractual Compliance team in anticipation of the 2013 rollout of the first new TLDs, and has continued its expansion of the department to meet that commitment. ICANN has also grown the related functions and departments that support the contractual compliance function. In 2011, a new Senior Director was hired, as well as three full-time staff members.[9] Active recruitment for three new positions is currently underway and the positions are posted on ICANN's career page.[10] The Contractual Compliance team now has members staffed in multiple ICANN offices, with fluency in multiple languages. ICANN will continue to expand this function in the coming ICANN fiscal budget year. ICANN is actively engaged in enhancing the "culture of compliance" around ICANN's key contractual relationships.

As noted above, active negotiations are underway with ICANN's accredited registrars regarding amendments to the Registrar Accreditation Agreement (RAA). By ICANN's meeting in March 2012, a series of amendments addressing the recommendations of law enforcement, including provisions related to Whois verification, requiring registrars to maintain points of contact for reporting abuse, reseller obligations, heightened obligations relating to privacy/proxy service, and others. The amendments are also expected to include increased compliance mechanisms. As discussed, ICANN is taking a strong stand in the negotiations, particularly in regard to issues relating to the verification and accuracy of Whois data. These strengthened provisions are expected to be in place prior to the roll out of the first new TLD, and ICANN is considering mechanisms for encouraging adoption of the improved RAA.

As we recently indicated to Chairman Leibowitz and his staff, we look forward to the FTC's participation in an upcoming forum being planned by ICANN and the accredited

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[9] The citation to budgeted staffing numbers within ICANN's FY12 Operating Plan and Budget Fiscal Year Ending 30 June 2012 does not tell the full story, as it does not reflect the actual staffing level of the Department. Today's Contractual Compliance team has four additional members than it did a year ago – nearly doubling in size.
[10] See ICANN's Career listing page, at https://icann-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.allpositions&company_id=16025&version=1.

gTLD registrar community to look at available tools for WHOIS verification and authentication.

ICANN's Management is committed to vigorous enforcement of both registry and registrar contracts. A more proactive approach by ICANN, combined with the uniform provisions of the proposed new gTLD registry contracts and the stronger enforcement tools that will be available under the improved RAA, will all assist in holding all contracted parties to their commitments.

3. ICANN is Committed to a Monitoring of Consumer Issues

ICANN welcomes and thanks the FTC for its commitment to participate in the reviews of how the introduction of new gTLDs promoted competition, consumer trust and consumer choice as required under the Affirmation of Commitments. As noted in your letter, there is a cross-community working group formed to do preliminary work towards this review, and involvement of the FTC can have at this stage would also be welcomed. In addition, ICANN would welcome any specific proposals regarding how ICANN could supplement the work it does regarding consumer complaints.

Of course, the monitoring of consumer issues related to the expansion of new TLDs may give rise to the need to create new mechanisms to deal with these issues – this is a longstanding practice within ICANN. For example, the need for the Inter-Registrar Transfer Policy was brought about by consumer complaints regarding barriers to transfer. ICANN is committed to working with the community – including the FTC – to identify new areas of concern and to be proactive in addressing how to address new consumer – and other – issues as they arise.

4. Evaluation of Proposed New gTLDs Allows For Consideration of Potential For Consumer Harm

The New gTLD Program contains significant safeguards for the assessment of all proposed new gTLDs. Security experts in the ICANN community worked together to fashion ten specific consumer protection measures that are included in this Program, and some are described in this letter. As rightly noted in the Commission's letter, the GAC Early Warning and GAC Advice provisions are not the only opportunities for evaluation of the potential for consumer harm associated with any individual application. Upon the

close of the application window, all of the applied-for strings will be made public, and multiple objection processes are available to stakeholders in general, as well as governments. In addition, there will be an "Independent Objector" function that will act in the best interests of the public and file an objection to an application as deemed appropriate. Through these well-defined objection processes, risks of user confusion are mitigated, as well as the risk of the introduction of a string that infringes on the legal rights of another.

In addition, the stringent background checks for applicants and the breadth of information collected on officers and directors of the applicant registries reduce the likelihood that persons that already have a history of malfeasance would pass through the application process.

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. 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. ICANN also has significant work underway to address calls for improvements to Whois data within all gTLDs.

ICANN looks forward to the FTC's continued engagement on all of the important issues raised within your letter.

Best regards,

Rod Beckstrom
President & CEO