



The Internet Association

VIA Electronic Delivery

December 10, 2013

Dr. Stephen Crocker
Chair
ICANN Board

Dear Dr. Crocker:

The Internet Association is writing to you regarding the Internet Corporation for Assigned Names and Numbers' ("ICANN") recent decision to permit singular and plural versions of the same string as a top-level domain name (TLD). We represent the world's leading Internet companies including: Airbnb, Amazon.com, AOL, eBay, Expedia, Facebook, Gilt, Google, IAC, LinkedIn, Lyft, Monster Worldwide, Netflix, Path, Practice Fusion, Rackspace, reddit, Salesforce.com, SurveyMonkey, TripAdvisor, Uber Technologies, Inc., Yahoo!, and Zynga. Our association is dedicated to advancing public policy solutions to strengthen and protect Internet freedom, foster innovation and economic growth, and empower users. Based on guidance from the Generic Names Supporting Organization ('GNSO'), the Governmental Advisory Committee ('GAC'), and recent expert determinations regarding a number of new generic top-level domain strings, we welcome this opportunity to urge the ICANN Board ('Board') to reverse its position on this important issue.

ICANN's mission is to ensure the stable operation of the Internet's unique identifier systems. To fulfill this mission, the Board relies on its subgroups, Advisory Committees, and Supporting Organizations to help drive its policy decisions. For instance, in 2008, the ICANN Board approved the GNSO's 2007 recommendation that new generic top-level domain strings must not be confusingly similar to an existing TLD or a reserved name.¹ This general policy is explained in Module 2.2.1.1 of the New gTLD Applicant Guidebook ('Guidebook'), which states that the String Similarity Review process is intended to 'prevent user confusion and loss of confidence in the DNS resulting from delegation of many similar strings.'² The Board's decision to move forward in delegating singular and plural TLDs undermines both GNSO's recommendation and Internet users' confidence in the DNS.

We understand that during the Beijing ICANN meeting earlier this year, the GAC advised the Board to reconsider its decision to allow singular and plural versions of the same

¹ Meeting of the New gTLD Program Committee, *Approved Resolutions*, Internet Corporation for Assigned Names and Numbers, (June 25, 2013)

<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm#2>.

² See Internet Corporation for Assigned Names and Numbers, *GTLD APPLICANT GUIDEBOOK*, [hereinafter *GUIDEBOOK*] (2012).



string because this decision could lead to potential consumer confusion.³ In its October 2013 letter to the New gTLD Program Committee, the ICANN GNSO Business Constituency, in which some of our members are active participants, expressed similar concerns.⁴ The Internet Association and its member companies urge ICANN to reverse its decision and discontinue the issuance of singular and plural versions for the following reasons:

(1) Violation of User Trust. As the Internet continues to evolve and develop, our association's member companies strive to create a safe online environment where Internet users may access companies' innovative products and services. Though our member companies are fierce competitors in the global marketplace, they are unified in their belief that Internet users should have the ability to type a unique domain name in order to reach a website they trust and intended to reach. Though ICANN's role is limited to technical coordination of DNS, we agree with the Business Constituency's position that the existence of singular and plural strings could encourage third party actors to take advantage of the system and increase Internet users' vulnerability to misconduct such as spoofing and phishing fraud.⁵

(2) Creation of Bad Precedent Regarding Ownership. As noted above, the existence of singular and plural versions of the same string could spur misconduct by third parties. This misconduct could impact not only Internet companies and their users but also future gTLD application rounds. For instance, applicants could apply for singular or plural versions in later rounds based on the proven success of a new gTLD.⁶ To avoid such misconduct, applicants may be forced to bid for their desired singular TLD as well as the plural version. This potential practice would result in an imbalanced system where more resourceful entities could bid for domain names over smaller entities.

(3) Inconsistencies in Arbitration Decisions. Since the Board permitted singular and plural versions of the same string, the International Centre for Dispute Resolution (ICDR) has considered several strings alleged to be confusingly similar and has issued inconsistent decisions based on the standard for string confusion explained in the Guidebook's Review Methodology.⁷ For instance, while one expert panel found that

³ ICANN Governmental Advisory Committee, *GAC Communiqué – Beijing, People's Republic of China*, <http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf> (Apr. 11, 2013).

⁴ Letter from Elisa Cooper, Chair, ICANN Business Constituency, to New gTLD Program Committee [hereinafter Business Constituency Letter] (Oct. 2013), *available at* <http://www.icann.org/en/news/correspondence/cooper-to-new-gtld-program-committee-22oct13-en.pdf> (last visited Nov. 22, 2013).

⁵ *Id.*

⁶ See Expedia, Inc., *Expedia comments to the New gTLD Board Committee on GAC Advice*, *available at* <http://forum.icann.org/lists/comments-gac-safeguard-advice-23apr13/pdfQ0ipZZtSi5.pdf> (last visited Nov. 22, 2013).

⁷ See GUIDEBOOK at 2-8. "String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average,



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.sport and .sports⁸ are confusingly similar, another expert panel found that .hotel and hotels⁹ are not. Discrepancies in rulings may be attributable to the review panel's broad discretion and the lack of clear standards. Without increased certainty in the standards applied and transparency in the IRDC's decisions, these inconsistent decisions will persist and further compromise users' confidence in the DNS.

We understand that ICANN recently issued its first singular/plural gTLD registry contract for .career and .careers. However, the existence of these domain names poses significant risks to the DNS, Internet companies, and their users. Therefore, The Internet Association urges the Board to take action and no longer permit the availability of these strings. To increase Internet user trust in the Internet ecosystem and in the DNS, we support the Business Constituency's recommendations that ICANN release any and all evidence considered in evaluating ICDR's decisions.¹⁰ Additionally, we believe that ICANN's establishment of specific objective criteria to be applied in each case and its implementation of an appeal system to challenge IDCR decisions will promote transparency in the process and ultimately result in more consistent decisions.¹¹

Thank you for your time and consideration.

Sincerely,

Michael Beckerman
President & CEO

CC:

Fadi Chehadé, ICANN President & CEO
Cherine Chalaby, Chair of the new gTLD Program Committee
Suzanne Radell, United States Governmental Advisory Committee Representative at the National Telecommunications and Information Administration

reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.”

⁸ See SportAccord, Objector and Steel Edge, LLC, Applicant re String: <.sports> (2013) (finding that .sport and .sports are confusingly similar because they sound similar in both English and French and are interchangeable as nouns and adjectives in English).

⁹ See Hotel Top-Level-Domain S.a.r.l, Objector and Booking.Com B.V., Applicant re String: <Hotels> (2013) (finding that the Objector did not meet its burden of proof due to insufficient factual and/or evidentiary support).

¹⁰ See Business Constituency Letter.

¹¹ *Id.*