

BARNES & NOBLE

BOOKSELLERS

VIA FEDERAL EXPRESS

February 21, 2013

Mr. Fadi Chehadé, President & Chief Executive Officer
Dr. Stephen D. Crocker, Chairman of the Board
ICANN
12025 Waterfront Drive Suite 300
Los Angeles CA 90094-2536

Dear Mr. Chehadé and Dr. Crocker:

Barnes & Noble, Inc. submits this letter to urge ICANN to deny Amazon.com's application to purchase several top level domains (TLDs), most notably .book, .read and .author (collectively the "Book TLDs").¹ Amazon, the dominant player in the book industry, should not be allowed to control the Book TLDs, which would enable them to control generic industry terms in a closed fashion with disastrous consequences not only for bookselling but for the American public. If Amazon, which controls approximately 60% of the market for eBooks and 25% of the physical book market², were granted the exclusive use of .book, .read and .author, Amazon would use the control of these TLDs to stifle competition in the bookselling and publishing industries, which are critical to the future of copyrighted expression in the United States.

Amazon's ownership would also threaten the openness and freedom of the internet and would have harmful consequences for internet users worldwide. When ICANN announced its plan to increase the number of TLDs available on the Domain Name System, one of its stated goals was to enhance competition and consumer choice. However, if the Book TLDs applications are granted to Amazon, no bookseller or publisher other than Amazon will be able to register second-level domain names in .book, .read and .author without Amazon's approval, leaving Amazon free to exclude competitors and exploit the generic Book TLDs for its sole benefit.

Anticompetitive Threat and Harm to the Public

ICANN states that "[o]ne of its key responsibilities is introducing and promoting competition in the registration of domain names."³ Indeed, when announcing its plan to increase the number of TLDs available on the Domain Name System, one of ICANN's stated goals was to enhance competition and consumer choice.⁴ As a result of ICANN's decision to expand the number of TLDs, over 1900

¹ Amazon has applied for numerous other generic TLDs in both English and in foreign languages, which applications include such blatantly generic TLDs as .mobile, .music, .shop and .store.

² See e.g. Financial Times "Publishers Task to Unlock eBook Market", November 12, 2012, <http://www.ft.com/intl/cms/s/0/a8f285ee-2370-11e2-bb86-00144feabdc0.html>.

³ <http://newgtlds.icann.org/en/about/program>

⁴ Ibid.

applications were filed.⁵ A majority of these applications conformed with ICANN's goals and fell into two groups: (1) closed brand name TLDs, and (2) open generic TLDs.

However, Amazon disregarded the guidance of ICANN and instead filed new TLD applications for generic terms in the very industries in which it holds significant market share, with the stated goal of controlling those TLDs – including .book, .read and .author – as closed registries. The concerns are especially acute in the bookselling industry, where Amazon already maintains a dominant position. As the Financial Times recently reported:

For though technological innovation has made it easier than ever before for readers to buy books, there is a catch: a single retailer – [Amazon](#) – dominates the digital distribution channels. Its power is set to become stronger as eBooks eat into print book sales.

Financial Times “Publishers Task to Unlock eBook Market”, November 12, 2012

By controlling the Book TLDs, Amazon will be positioned to gain unfair advantage in direct navigation and online search; will become associated with the very genus of books; and will likely control the generic Book TLDs in perpetuity as the registry agreements permit unlimited automatic renewal in ten-year terms. Additionally, Amazon will likely be able to prevent substantially similar TLDs from registering in the future, such as .books. Needless to say, this will result in steep barriers to entry for would-be competitors. As the governments of Australia and Germany noted during the GAC Early Warning Process with regard to generic TLDs, there will be a significant “negative impact on competition” by barring other entities, especially competitors, from using those generic TLDs.⁶ The Government of Australia also specifically objected to Amazon's applications for closed generic TLDs, including objecting to Amazon's application for the .book TLD.⁷

Ownership of common industry terms as closed generic TLDs by industry players would be anticompetitive and limit consumer choice across the Internet. This is especially true with regard to Amazon, which has a history of anticompetitive activity. Additionally, Amazon's anticompetitive activities would not only affect its competitors in the bookselling industry but would also impact the future of copyrighted expression. See e.g. Barry C. Lynn, *Killing the Competition: How the New Monopolies Are Destroying Open Markets*, Harper's Magazine, February 2012, at 33 (“Amazon “has long since accumulated sufficient influence over their [publishing] business to ensure that these most dedicated defenders of the book – and of the First Amendment – dear not speak openly of the company's predations.”)

Part of what has contributed to the vibrant growth of the internet is the ability of consumers to transcend physical boundaries to share information and find economic opportunity worldwide. People and companies have freely registered domain names in TLDs of their choice, whether the traditional .com TLDs, or more specific TLDs such as .mobi and .org. This has been critical to the success of the internet. The potential acquisition by Amazon of the Book TLDs threatens this balance.

⁵ <http://www.icann.org/en/news/announcements/announcement-13jun12-en.htm>

⁶ See e.g. <https://gacweb.icann.org/download/attachments/22938690/Search-AU-13549.pdf?version+1&modificationDate+1353432052000>

⁷ Ibid. See also *Book and Publishing, Australia Objects to Amazon's Application for .book*, December 7, 2012, <http://www.booksellerandpublisher.com.au/DetailPage.aspx?type=worlditem&id=25783>

If ICANN allows Amazon's closed generic TLDs to proceed however, consumers freedom of expression will be limited. Consumers who are searching for books and associated digital content want choice, not the product or service of a specific company. Unfortunately, the undoubted consequence of Amazon's controlling the Book TLDs is to hand the power to Amazon to exclude competitors and exploit the generic Book TLDs for its sole benefit.

Conclusion

Amazon's clear goal is to dominate the bookselling and publishing markets. Their drive to further consolidate these markets will be greatly aided by their control of the .book, .read and .author TLDs. By having Amazon control these TLDs, creativity will be limited and content diversity threatened. The solution is to deny Amazon's closed TLD applications or in the alternative to require that Amazon operate such TLDs as open registries, allowing free access to competitors.

Please contact Mr. DeFelice at 212-352-3888 or Mr. Feuer at 212-633-3245 should you have any questions or comments.

Thank you for your time and consideration.

Sincerely yours,



Eugene V. DeFelice
Vice President, General Counsel & Corporate Secretary



Bradley A. Feuer
Vice President, Assistant General Counsel