



The Internet Corporation for Assigned Names and Numbers

9 August 2011

Mr. Robert Liodice
President & CEO
Association of National Advertisers
1120 20th Street NW, Suite 520 South
Washington, DC 20036

Dear Mr. Liodice,

We are in receipt of your letter of 4 August 2011. The development and implementation of the New gTLD Program is consistent with and has been driven by ICANN's multi-stakeholder model, core values and responsibilities as documented in the Affirmation of Commitments.

Acting in the public interest, ICANN supports and defends the bottom-up, multi-stakeholder model that has produced carefully crafted policies that promote competition and user choice while creating a safer, more stable Domain Name System.

The assertions in your letter are either incorrect or problematic in several respects. Perhaps the most severe mischaracterizations concern the ICANN process.

The entire ICANN Internet community, including businesses, ISPs, intellectual property holders and experts, governments, registries and registrars, and representatives of Internet users around the world - carefully considered the implications of the New gTLD Program at each stage of the process. A strong consensus for moving forward was demonstrated by the Generic Names Supporting Organization's super-majority approval and by the active participation of all these groups in determining the details of implementation.

Opening the name space to the introduction of new gTLDs in a responsible manner was one of the main objectives of the U.S. Government and interested stakeholders present at ICANN's creation.¹ The June 2011 decision to proceed with the program followed six years of inclusive policy development and implementation planning. Significant actions have been taken to balance the concerns of all interested parties, provide protections for rightsholders, registrants and users, and to ensure that the security, stability, and resiliency of the Internet are not compromised.

Multiple public meetings and at least 45 lengthy public comment periods were conducted and thousands of comments, representing a broad range of interests, were received. Every comment submitted (including those submitted by the ANA) was read, summarized, posted for all to see, and factored into the

¹ See White Paper at <http://www.icann.org/en/general/white-paper-05jun98.htm>

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decision-making process. The extent of this collaborative process, the responsiveness to public comment², and the volume of changes (across seven full drafts of the Applicant Guidebook³) in response to stakeholder input are well documented.⁴

Your letter also claims that the program represents “unrestricted expansion” or allows “virtually any word or phrase.” These statements demonstrate a lack of understanding of Program details. More research on your part would have revealed: (i) restrictions on delegation rates; (ii) string requirements and limitations; (iii) required applicant background, financial and technical qualifications; (iv) objection processes for infringing and other inappropriately applied-for strings; and (v) standing registry operator obligations in the registry agreement.

² The volume of public comment analysis reaches nearly a thousand pages of thorough analysis of the issues, on draft versions of the Applicant Guidebook alone, exclusive of other related proposals that were discussed within the community. See <http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>; <http://www.icann.org/en/topics/new-gtlds/agv2-analysis-public-comments-31may09-en.pdf>; <http://www.icann.org/en/topics/new-gtlds/agve-analysis-public-comments-04oct09-en.pdf>; <http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf>; <http://www.icann.org/en/topics/new-gtlds/urs-comment-summary-and-analysis-28may10-en.pdf>; <http://www.icann.org/en/topics/new-gtlds/trademark-clearinghouse-comments-and-summary-28may10-en.pdf>; <http://www.icann.org/en/topics/new-gtlds/pddrp-comment-summary-and-analysis-28may10-en.pdf>; <http://www.icann.org/en/topics/new-gtlds/rrdrp-comment-summary-and-analysis-28may10-en.pdf>; <http://www.icann.org/en/topics/new-gtlds/idn-3-character-comment-analysis-28may10-en.pdf>; <http://www.icann.org/en/topics/new-gtlds/idn-variants-comment-analysis-28may10-en.pdf>; <http://www.icann.org/en/topics/new-gtlds/registry-agreement-amend-process-comments-28may10-en.pdf>; <http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv4-12nov10-en.pdf>; <http://www.icann.org/en/topics/new-gtlds/summary-analysis-proposed-final-guidebook-21feb11-en.pdf>; <http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv6-30may11-en.pdf>.

³ See <http://www.icann.org/en/topics/new-gtlds/comments-en.htm>; <http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm>; <http://www.icann.org/en/topics/new-gtlds/comments-3-en.htm>; <http://www.icann.org/en/topics/new-gtlds/comments-4-en.htm>; <http://www.icann.org/en/topics/new-gtlds/comments-5-en.htm>; <http://www.icann.org/en/topics/new-gtlds/comments-6-en.htm>; <http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>.

⁴ See also the Board of Directors detailed statements of rationale at <http://www.icann.org/en/minutes/rationale-board-approval-new-gtld-program-launch-20jun11-en.pdf>, numbering 120 pages.



Your quotations from the economic studies are highly selective and lead to an unsupported conclusion that more domain names will lead to cyber security lapses or consumer privacy violations. Your claim of “enormous financial burdens” and other broad statements are offered without supporting data or rationale. I invite you to review the entire set of economic studies⁵, which explored the current marketplace, and applied expert analysis to an examination of the potential risks and benefits as far as possible (noting that the benefits of innovation are difficult to predict). As you point out, these studies recommended the implementation of additional protections against trademark abuse and malicious conduct. ICANN formed teams of internationally recognized experts to adopt both these recommendations and incorporate many significant new safeguards into the program.⁶

The letter suggests that companies have no choice but to apply for their own gTLDs. Operating a gTLD means assuming a number of significant responsibilities; this is clearly not for everyone. Indeed, it is hoped that those without an interest in making a contribution to expanded choice or innovation in the DNS will not apply. One clear directive of the consensus policy advice on which the program is built is that TLDs should not infringe the existing legal rights of others. The objection process and other safeguards eliminate the need for “defensive” gTLD applications, because where an infringement of legal rights can be established using these processes, an application will not be approved.

The exceptional levels of care and detail in considering the concerns of intellectual property stakeholders are also well documented. Following calls for additional rights protection mechanisms (RPMs), ICANN’s Board of Directors formed a team of 18 intellectual property experts from around the world – the Implementation Recommendation Team (IRT). The IRT’s work (including five face-to-face meetings across the globe and many conference calls), consultation with other expert teams, and intensive interaction with governments culminated in a number of new RPMs, contributing to a safer environment in the new expanded space.

For example:

- a. Establishment of a Trademark Clearinghouse as an information repository performing specific information collection and data validation services. A model for such a clearinghouse, as well as a mandatory Sunrise period and mandatory Trademark Claims service, have all been incorporated into the program. The Sunrise period means that rightsholders will have the first opportunity to secure domain names as desired. The Trademark Claims service provides notice to rightsholders where matching names are registered during the initial launch period. The Trademark Clearinghouse is designed to create efficiencies for trademark holders, so that rights information need only be submitted and validated once, and for other parties in the registration process, by creating a centralized source of information.

⁵ <http://www.icann.org/en/topics/new-gtlds/related-en.htm>

⁶ <http://www.icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf>



- b. Implementation of a Uniform Rapid Suspension (URS) system as a cost-effective and timely mechanism for brand owners to protect their trademarks and to promote consumer protection on the Internet. The URS is a complement to the existing Uniform Domain Name Dispute Resolution Policy (UDRP), and will allow for rapid suspension of a registered name in clear-cut cases of infringement. Intellectual property stakeholders, governments, and representatives from multiple other stakeholder groups, spent significant time refining the details of this proposal so that it would be an efficient, low-cost, and meaningful tool for rightsholders.
- c. Establishment of post-delegation dispute mechanisms to attach liability to (i) Registry Operators that operate a TLD in a manner that is inconsistent with the representations and warranties contained within its Registry Agreement, or (ii) Registry Operators that have a bad faith intent to profit from the systemic registration of infringing domain names (or systemic cybersquatting) in the Registry Operator's TLD. For example, a Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) has been incorporated into the Registry Agreement, and provides another tool for rightsholders.
- d. Requirement for maintenance of a "thick" (more detailed) Whois database in all new gTLD registries, and a requirement that this information is readily available to those who qualify through a centralized source, making it easier to locate wrongdoers than in the current environment. These requirements have been incorporated into the Registry Agreement.

The ANA provided feedback using ICANN's public participation process, and its suggestions have been carefully considered as described below. Referring to the comment submitted by the ANA on 15 December 2008, that letter stated:

Although ANA would have preferred ICANN to have decided against introducing the gTLD proposal, we urge, at a minimum, that ICANN move cautiously and consider points carefully before embarking on this potentially seismic shift in domain availability.

The letter suggested five specific proposals that ICANN should, at a minimum, consider:

1. *Protections for Trademarks. ICANN should explore additional application restrictions, processes and technologies to insulate brand owners from the costs and burdens of chasing and prosecuting squatters and others for violation of their trademark rights.*

In response to this and similar comments, ICANN convened the IRT to recommend additional trademark protections, as described above. The majority of those recommendations have been incorporated, many in a stronger form than was originally proposed by the IRT.

2. *Transparency of Applications and Registration Information. Some comments suggest transparency in the application process (e.g., elimination of proxy registrations, heightened emphasis on the provision of complete "whois" information, and posting all gTLD applications) will lead to less abuse. ICANN should examine these proposals as well.*



In response to this and other comments: (1) more application information will be made public in the process (personally identifiable information and sensitive security or proprietary information are not published), (2) background checks have been deepened, and (3) all new gTLD registries are required to maintain a “complete” or “thick” Whois model.

3. *Fees. ICANN should study the various issues raised concerning fees, including those questions relating to how the new proposed fee structure might impact fee structures with existing gTLDs.*

In response to this and other comments, fee structures have been extensively studied. The process used for estimating fees has been available since October 2008⁷, and was iterated⁸ in response to public comment, and a study was undertaken on registry competition and price caps.⁹

4. *General Process Issues. ANA notes several application and adjudication process issues that should be analyzed, including ICANN’s right to “overrule” the determination of a Dispute Resolution Provider, the apparent absence of judicial remedy and how allowing public comments on the application process impacts it as a whole and, particularly, the objection process.*

In response to this and other comments, elaborations were made to the objection processes, and the roles of the Board, governments, and public comment have been clarified.

5. *“Generic” gTLDs (e.g., .bank, .insurance, .securities, .medicine, etc.) have a unique social and commercial value as they are broadly descriptive of industries and other unifying activities. Under the terms of the Draft RFP, anyone can apply for these “generic” gTLDs, including a single member of the applicable industry. ANA suggests that ICANN thoroughly review the uses and standing requirements for these gTLDs.*

In response to this and other comments, and in particular working with BITS and the financial services industry, a requirement was added that security capabilities should be commensurate with the nature of the string, i.e., applications for strings with unique trust implications are expected to provide a commensurate level of security.

All of these comments were considered, responded to, and, as is clear from the above, largely accepted. This is indicative of the process (that this letter merely scratches the surface in describing) that was followed with all stakeholder comment to arrive at a balanced outcome.

ICANN has promised, in the Affirmation of Commitments and otherwise, to continue to study these issues on an ongoing basis. In consultation with the ICANN community, revisions can be made if experience

⁷ <http://www.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf>

⁸ <http://www.icann.org/en/topics/new-gtlds/cost-considerations-04oct09-en.pdf>

⁹ <http://www.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf>



identifies possible improvements as the program evolves. These reviews will be undertaken with the same level of caution, care, and consultation that has characterized the implementation work to date.

ICANN is unyielding in its commitment to the public interest, and the new generic top-level domain Program is only one expression of this commitment.

Please be advised that ICANN will vigorously defend the multi-stakeholder model and the hard-fought consensus of its global stakeholder participants, its duty to act in accordance with established bottom-up processes, and its responsibility to the broad public interest of the global Internet community, rather than to the specific interests of any particular group.

As you may be aware, ICANN's activities extend beyond this program. It works for the benefit of the public interest, including your organization, in ways large and small. I invite you to contact my office to discuss how the ANA might participate more actively in the policy development activities and other ICANN processes going forward, in light of our shared goals of a safe and stable global Internet.

Sincerely,

A handwritten signature in dark ink, appearing to read "Rod Beckstrom", written in a cursive style.

Rod Beckstrom
President and CEO

cc: Ms. Victoria Espinel, US. Intellectual Property Rights Enforcement Coordinator, The White House
The Honorable Rebecca M. Blank, Acting U.S. Secretary of Commerce
Mr. Lawrence E. Strickling, Administrator, National Telecommunications and Information Administration, U.S. Department of Commerce
Ms. Suzanne Radell, Senior Policy Adviser, NTIA, U.S. Department of Commerce
Ms. Fiona M. Alexander, Associate Administrator, Office of International Affairs, National Telecommunications and Information Administration
The Honorable Patrick Leahy, Chairman, Senate Judiciary Committee
The Honorable Charles E. Grassley, Ranking Member, Senate Judiciary Committee
The Honorable Robert W. Goodlatte, Chairman, House Judiciary Subcommittee on Intellectual Property, Competition, and the Internet
The Honorable Melvin L. Watt, Ranking Member, House Judiciary Subcommittee on Intellectual Property, Competition, and the Internet