

Congress of the United States
Washington, DC 20510

December 27, 2011

Mr. Rod Beckstrom, CEO and President
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601 USA

Dear Mr. Beckstrom:

We write regarding ICANN's proposed program to allow companies and organizations to apply for new Top Level Domain Names (TLDs) in the Internet's address system. As the Chairmen and Ranking Members of the United States Senate and House Committees with jurisdiction over our intellectual property laws, we wish to express concerns with the program and urge ICANN to strengthen protections for consumers and trademark holders who risk being harmed by the proliferation of domain names on the web. We also urge ICANN to work closely with the law enforcement community to ensure that the program's rollout does not adversely impact their efforts to fight fraud and abuse on the Internet.

The new TLD program will mark a major change in the structure of the Internet, expanding the existing 22 generic TLDs (such as ".com" and ".net") to potentially thousands of new TLDs such as ".shop", ".DC", and "[brand]". While this change may create opportunities for business expansion and innovation, it also multiplies the opportunities for cyber-squatters and other rogue actors to mislead consumers, harm legitimate businesses, and undermine public confidence in the security of the Internet. The tens of thousands of rogue websites that already steal familiar trademarks to lure consumers to harmful sites will now have countless more opportunities to do so in the new generic TLDs that ICANN plans to authorize. Businesses, nonprofit organizations and individual trademark holders will face higher costs and a much greater burden to protect their identities online.

The risks to trademark holders and online consumers are very real: in recent weeks, universities across the United States have spent thousands of dollars to purchase domain names in the newly-created ".xxx" TLD to prevent malicious registrations that would associate their names and trademarks with pornographic websites. The YMCA's general counsel recently testified about the prohibitive costs that nonprofit organizations will face to defensively register their trademarks in new TLDs to avoid public confusion and fraud. The potential for bad actors fraudulently to register websites such as "www.ymca.give" to engage in online theft raises deeply troubling concerns for the public, law enforcement, and trademark holders who must try to combat such abuses.

We join the chorus of commentators who have urged ICANN to proceed deliberately and with caution in its approval of new generic TLDs, considering the input of the global Internet community, ICANN's multinational Government Advisory Committee, intellectual property rights holders and community objectors before approving the creation of each new generic TLD.

Specifically, we urge ICANN to make the prevention of online fraud and abuse a strategic priority, including by addressing fundamental weaknesses in the protection mechanisms ICANN is developing to tackle the threat of online fraud. For example, the value of the proposed centralized Trademark Clearinghouse (TMCH), where trademark holders may register their trademarks to receive alerts when a second-level domain name has been registered that identically matches their mark, is severely undermined by the temporary nature of the service. The value of the proposed clearinghouse is also limited by the fact that it would only provide alerts about registrations that are identical to trademarks, ignoring typo-squatting and cyber-squatting that combines trademarks with generic words to create a domain name.

We are also deeply concerned about the administration of TLDs that are susceptible to abuse because they indicate trusted industries that consumers expect to be well-regulated (such as “.Rx”, “.pharma” or “.bank”), or involve markets that are common targets for counterfeiting and theft of intellectual property (such as “.music”, “.movie” and “.dvd”). For many Internet users, top-level domain names are trusted signs that validate the content of websites. Generic TLDs that present a heightened risk of consumer fraud must be managed by responsible registries that have made affirmative, contractual commitments to employ strict standards to deter, detect, and quickly address abuses in their domain.

For these reasons, it is imperative that ICANN conduct a comprehensive evaluation of consumer risks associated with each proposed new TLD before delegating those domains, especially for domains that will inherently raise concerns among stakeholders. If the applicants for a vulnerable domain fail to demonstrate an ability to manage the domain’s sensitivities effectively, we urge ICANN to postpone delegation of that domain until future rounds.

The delegation of new TLDs provides a unique opportunity to enhance protections for consumers and rights holders. We hope that ICANN and generic TLD applicants will continue to see the protective measures set forth in the TLD Applicant Guidebook as the baseline, not the bar, for protecting Internet users and addressing the threat of online fraud and abuse.


Among other reforms, ICANN has indicated its intention to increase its compliance/oversight function, and to address the significant problem of false “WhoIs” data provided by rogue website registrants who escape the reach of law enforcement by hiding behind false registrations. We commend this commitment and urge ICANN to continue working closely with law enforcement and other constituents to address the threat of online abuse in a responsible way.


Going forward, we urge ICANN to continue reviewing the merits of the TLD application process and the strength of the rights protection mechanisms that have been put in place. We urge ICANN to remain open to the comments of all interested stakeholders, including the United States Congress, in its review.


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We thank you for your consideration and attention to this important matter.

Sincerely,


PATRICK LEAHY
Chairman
Senate Judiciary Committee


CHARLES E. GRASSLEY
Ranking Member
Senate Judiciary Committee


LAMAR SMITH
Chairman
House Judiciary Committee


JOHN CONYERS, JR.
Ranking Member
House Judiciary Committee

CC:
Mr. Steve Crocker, Chairman, Board of Directors
Mr. Kurt Pritz, Senior Vice President