

# ICANN'S EXPANSION OF TOP LEVEL DOMAINS

---

---

## HEARING

BEFORE THE

COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

---

DECEMBER 8, 2011

---

Printed for the use of the Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PRINTING OFFICE

74-251 PDF

WASHINGTON : 2012

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

JOHN D. ROCKEFELLER IV, West Virginia, *Chairman*

DANIEL K. INOUE, Hawaii	KAY BAILEY HUTCHISON, Texas, <i>Ranking</i>
JOHN F. KERRY, Massachusetts	OLYMPIA J. SNOWE, Maine
BARBARA BOXER, California	JIM DEMINT, South Carolina
BILL NELSON, Florida	JOHN THUNE, South Dakota
MARIA CANTWELL, Washington	ROGER F. WICKER, Mississippi
FRANK R. LAUTENBERG, New Jersey	JOHNNY ISAKSON, Georgia
MARK PRYOR, Arkansas	ROY BLUNT, Missouri
CLAIRE MCCASKILL, Missouri	JOHN BOOZMAN, Arkansas
AMY KLOBUCHAR, Minnesota	PATRICK J. TOOMEY, Pennsylvania
TOM UDALL, New Mexico	MARCO RUBIO, Florida
MARK WARNER, Virginia	KELLY AYOTTE, New Hampshire
MARK BEGICH, Alaska	DEAN HELLER, Nevada

ELLEN L. DONESKI, *Staff Director*

JAMES REID, *Deputy Staff Director*

TODD BERTSON, *Republican Staff Director*

JARROD THOMPSON, *Republican Deputy Staff Director*

REBECCA SEIDEL, *Republican General Counsel and Chief Investigator*

## CONTENTS

	Page
Hearing held on December 8, 2011 .....	1
Statement of Senator Klobuchar .....	1
Statement of Senator Rockefeller .....	46
Statement of Senator Boozman .....	48
Statement of Senator Cantwell .....	50
Statement of Senator Ayotte .....	53

### WITNESSES

Fiona M. Alexander, Associate Administrator, Office of International Affairs, National Telecommunications and Information Administration, U.S. De- partment of Commerce .....	1
Prepared statement .....	3
Kurt Pritz, Senior Vice President, Stakeholder Relations, Internet Corpora- tion for Assigned Names and Numbers (ICANN) .....	6
Prepared statement .....	7
Angela F. Williams, General Counsel, YMCA of the USA .....	21
Prepared statement .....	22
Daniel L. Jaffe, Executive Vice President, Government Relations, Association of National Advertisers (ANA) .....	25
Prepared statement .....	26
Esther Dyson, Founding Chairman of ICANN, 1998–2000; currently an Inde- pendent Angel Investor .....	42
Prepared statement .....	44

### APPENDIX

Response to written questions submitted to Fiona Alexander by:	
Hon. Maria Cantwell .....	69
Hon. Olympia J. Snowe .....	70
Response to written questions submitted to Kurt Pritz by:	
Hon. Barbara Boxer .....	72
Hon. Maria Cantwell .....	75
Hon. Claire McCaskill .....	78
Hon. Mark Warner .....	82
Hon. Olympia J. Snowe .....	89
Response to written questions submitted by Hon. Olympia J. Snowe to Angela Williams .....	96
Response to written question submitted to Daniel L. Jaffe by:	
Hon. Maria Cantwell .....	98
Hon. Claire McCaskill .....	99
Hon. Olympia J. Snowe .....	99
Response to written question submitted to Esther Dyson by:	
Hon. Maria Cantwell .....	103
Hon. Olympia J. Snowe .....	104
Paul Garrin, Founder, Name.Space, Inc., prepared statement .....	106
Letter dated December 14, 2011 from Beau Brender, Chair, North American Regional At-Large Organization (NARALO) and Dr. Oliver MJ Crépin- Leblond, Chair, At-Large Advisory Committee, ICANN to Hon. John D. (Jay) Rockefeller IV .....	108
Letter dated December 8, 2011 from Stephen A. Cox, President and CEO, Council of Better Business Bureaus (CBBB) to Hon. Jay Rockefeller IV and Hon. Kay Bailey Hutchison .....	109

IV

	Page
Letter dated December 7, 2011 from Rebecca MJ Gould, Vice President, Global Government Relations and Public Policy, Dell, Inc. to Senator Jay Rockefeller and Senator Kay Bailey Hutchison .....	110
Jim Gibbons, President and CEO, Goodwill Industries International, prepared statement .....	111
Letter dated December 12, 2011 to Hon. John D. Rockefeller IV from Jennifer Dexter, Assistant Vice President, Government Relations, Easter Seals .....	113
National Restaurant Association, prepared statement .....	113
Josh Bourne, President, Coalition Against Domain Name Abuse (CADNA), prepared statement .....	114
Letter to Hon. John D. Rockefeller IV and Hon. Kay Bailey Hutchison from Alexa Raad, Chief Executive Officer, Architelos; Alexander Siffrin, Chief Executive Officer, Key Systems GmbH; Andreas Schreiner, Chief Executive Officer, InterNetWire Communications; GmbH Angie D. Graves, President, WEB Group, Inc.; Antony Van Couvering, Chief Executive Officer, Minds + Machines; Bhavin Turakhia, Chief Executive Officer and Founder, Directi; Bret Fausett, President and Founder, Internet Pro APC; Clyde Beattie, Principal, The Yorkland Group; Dr. Liz Williams, Chief Executive Officer, Sedari; Elliot Ness, Chief Executive Officer, Tucows; John Styli, Chief Operating Officer, Far Further; Jonathon Nevett, President, Domain Dimensions, LLC; Kevin Saimon, President, Urban Brain; Krista Papac, Chief Strategy Officer, ARI Registry Services; Loren Salman, Chief Executive Officer, Far Further; Mason Cole, Principal, 5x5 Communications; Michael Berkens, Director, RightOfTheDot LLC; Mike Rodenbaugh, Founder, Rodenbaugh Law; Monte Cahn, President/Director, RightOfTheDot LLC; Nacho Amadoz, Legal & Policy Director, Fundació PuntCAT; Paul Stahura, Chief Executive Officer, Donuts Inc.; Richard Wilhelm, Principal, RJW Partners, LLC; Robert Connelly, President, Domains Only; Robin Gross, Executive Director, IP Justice; Steve Miholovich, Sr. Vice President Sales & Marketing, Safenames Ltd.; Susan Prosser, Vice President, Marketing, Domain Tools; Tad Yokoyama, President, Interlink Co., Ltd.; William Mushkin, Chief Executive Officer and Founder, Name.com .....	116

## ICANN'S EXPANSION OF TOP LEVEL DOMAINS

THURSDAY, DECEMBER 8, 2011

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:48 a.m. in room SR-253, Russell Senate Office Building, Hon. Amy Klobuchar, presiding.

### **OPENING STATEMENT OF HON. AMY KLOBUCHAR, U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. The Committee will come to order. We have all our witnesses here. Thank you very much. We're in a time crunch and I know that Senator Rockefeller's going to be joining us shortly, as well as some other Senators. But I wanted to get this going, in the interest of time, because we're going to have to end at 10 minutes to twelve o'clock.

This is a very important hearing and I wanted to first introduce our witnesses. We first have Ms. Fiona Alexander. She's the Associate Administrator for the Office of International Affairs in the National Telecommunications and Information Administration.

We also have Ms. Angela Williams. Ms. Williams is the General Counsel for the YMCA of the U.S.A. and is also speaking on behalf of the Not-for-Profit Operational Concerns Constituency.

We have Mr. Daniel Jaffe. Mr. Jaffe is an Executive Vice President for Government Relations for the Association of National Advertisers. He's also speaking on behalf of the Coalition for Responsible Internet Domain Oversight.

We also have Ms. Esther Dyson. Ms. Dyson was the Founding Chairman of the ICANN's board of directors. She served in that role from 1998 to 2000.

Then we also have with us Mr. Kurt Pritz. Mr. Pritz is Senior Vice President for Stakeholder Relations for the Internet Corporation for Assigned Names and Numbers, also known as ICANN.

Do you want to begin? Each witness has 5 minutes, and we will start with Ms. Alexander.

### **STATEMENT OF FIONA M. ALEXANDER, ASSOCIATE ADMINISTRATOR, OFFICE OF INTERNATIONAL AFFAIRS NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE**

Ms. ALEXANDER. Good morning, Senator Klobuchar. I appreciate the opportunity to talk to you today on behalf of NTIA regarding ICANN's planned expansion of the Internet's domain name system

through the introduction of new generic top-level domains, or new gTLDs.

Since its inception in 1998, ICANN has been charged with promoting competition in the registration of domain names while ensuring the security and stability of the DNS. In 2000 and 2003, ICANN conducted a limited expansion of gTLDs. In 2005 it initiated the process we are discussing today. After 6 years of multi-stakeholder discussion, including input from governments through the governmental advisory committee, ICANN approved the rules for the new gTLD program in the form of an applicant guidebook.

Expansion of the gTLD space is expected to provide a platform for city, geographic, and internationalized domain names, among other things. This type of change to the DNS is expected to enhance consumer trust and choice and reinforce the global nature of the Internet. It is also expected that a portion of applications will either be generic words or brand-focused as part of business development, investment, and startup plans.

Within ICANN, the GAC provides governments a meaningful opportunity to participate in the development of policies related to DNS issues. Over the last 6 years, NTIA has actively engaged with its counterparts in the GAC in developing advice to inform this program.

In December 2010, the GAC developed a scorecard of the outstanding issues governments had with the program. Between February and June of this year, GAC representatives from around the world met with the ICANN board in extended face-to-face discussions to review the GAC scorecard and identify specific differences between GAC advice and existing versions of the applicant guidebook. These unprecedented exchanges resulted in the adoption of a significant number of changes to the program.

NTIA believes that ICANN improved the new gTLD program by incorporating a significant number of proposals from the GAC, including providing law enforcement and consumer protection authorities with significantly more tools than those available in existing gTLDs. The fact that not all of GAC's proposals were adopted as originally offered does not represent a failure of the process or a setback to governments. Rather, it reflects the reality of a multi-stakeholder model.

As a member of the GAC, NTIA will continue to actively monitor and participate in discussions related to the expansion of new gTLDs. NTIA appreciates that certain trademark owners and other stakeholders have expressed concerns regarding the program. Safeguarding the rights of trademark owners and ensuring appropriate consumer protections as this process moves forward remains a top priority. As such, NTIA is committed to working with U.S. industry and other stakeholders as the new gTLD program unfolds to mitigate any unintended consequences.

In addition, NTIA intends to continue to collaborate with U.S. Government agencies to track their experiences and to coordinate the collection of data regarding the effects on consumers and business users. In particular, NTIA, working with other agencies, will focus on ensuring that law enforcement concerns are addressed through strengthened registry and registrar accreditation agreements and enhanced contract compliance.

NTIA will also be encouraging interested parties to collaborate in the development of metrics to facilitate the review of the new gTLD program. We feel strongly that the review must be informed by fact-based, real-time experiences that can be captured by data from a variety of sources.

NTIA is dedicated to maintaining an open, global Internet that remains a valuable tool for economic growth, innovation, and the free flow of information, goods, and services on line. We believe the best way to achieve this goal is to continue to actively support and participate in multi-stakeholder Internet governance processes such as ICANN.

Thank you again for the opportunity to testify this morning. NTIA looks forward to working with Congress, U.S. businesses, individuals, and other stakeholders to preserve and enhance the multi-stakeholder model that has been the hallmark feature of global Internet institutions that have truly been responsible for the success of the Internet.

I'll be happy to answer any questions.

[The prepared statement of Ms. Alexander follows:]

PREPARED STATEMENT OF FIONA M. ALEXANDER, ASSOCIATE ADMINISTRATOR, OFFICE OF INTERNATIONAL AFFAIRS, NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

### Introduction

Good morning, Chairman Rockefeller and members of the Committee. I appreciate the opportunity to talk to you today on behalf of the National Telecommunications and Information Administration (NTIA) regarding the planned expansion of the Internet's domain name system (DNS) by the Internet Corporation for Assigned Names and Numbers (ICANN). NTIA is the Executive Branch expert on issues relating to the DNS and supports a multi-stakeholder approach to the coordination of the DNS to ensure the long-term viability of the Internet as a force for innovation and economic growth. Working with other stakeholders, NTIA is developing policies to preserve an open, interconnected global Internet that supports continued innovation and economic growth, investment, and the trust of its users. This multi-stakeholder model of Internet policymaking—convening the private sector, civil society as well as governments to address issues in a timely and flexible manner—has been responsible for the past success of the Internet and is critical to its future.

I will begin today by providing context for the announced expansion of generic top level domains (gTLDs) used on the Internet, detail the specific efforts of NTIA as the U.S. Government representative to the Governmental Advisory Committee (GAC) to improve the ICANN program, and then describe the tools available to NTIA and the global community to manage any challenges that may arise.

### Context for Planned Expansion of the Domain Name System

ICANN is a not-for-profit corporation based in California that is responsible for coordinating the Internet's DNS. The DNS is a critical component of the Internet infrastructure. It works like a telephone directory, allowing users to reach websites using easy-to-understand domain names (*e.g.*, <http://www.commerce.gov>) rather than the numeric network server addresses (*e.g.*, <http://170.110.225.163>) necessary to retrieve information on the Internet. ICANN develops policies through a bottom-up, multi-stakeholder led process with an international community of stakeholders that mirrors the global nature of the Internet. On September 30, 2009, NTIA, on behalf of the Department of Commerce, entered into an *Affirmation of Commitments* (Affirmation) with ICANN that established ICANN's multi-stakeholder, private-sector led model as the long-lasting framework for the technical coordination of the Internet DNS.<sup>1</sup> The Affirmation completed the transition begun in 1998 by a Memorandum of Understanding (MOU) between the Department and ICANN that was amended several times.

<sup>1</sup>See [http://www.ntia.doc.gov/files/ntia/publications/affirmation\\_of\\_commitments\\_2009.pdf](http://www.ntia.doc.gov/files/ntia/publications/affirmation_of_commitments_2009.pdf).

Since its inception in 1998, ICANN has been charged with promoting competition in the registration of domain names, while ensuring the security and stability of the DNS. The goal to establish new gTLDs beyond .com, .edu, .gov, .int, .mil, .net, and .org began over a decade ago. In 2000 and 2003, ICANN conducted a limited expansion of generic top level domain names. Resulting in the addition of .biz, .info, .name, .pro, .aero, .coop, .museum, .asia, .cat, .jobs, .mobi, .tel, and .travel gTLDs to the DNS. In 2005, it initiated a process to develop the policies and procedures necessary to introduce an unlimited number of new gTLDs. After six years of multi-stakeholder policy development and implementation planning, including input from governments through the GAC, the ICANN Board of Directors (Board) approved the rules for the new gTLD program in June 2011, publishing the rules in the form of an Applicant Guidebook.<sup>2</sup>

Expansion of the gTLD space is expected to provide a platform for city, geographic, and internationalized domain names, among other possible top level domain strings. Expansion of the new gTLD space has, since its inclusion in the original MOU with ICANN, been intended to allow new TLD operators to create and provide content in native languages and scripts, otherwise known as Internationalized Domain Names or IDN, in addition to new gTLDs in ASCII or Latin scripts. This type of change to the DNS is expected to enhance consumer trust and choice, and reinforce the global nature of the Internet. It is also expected that a portion of applications will be either generic words or brand-focused as part of business development, investment, and startup plans.

#### **NTIA as a Member of the Governmental Advisory Committee (GAC)**

The multi-stakeholder policymaking process seeks to involve all stakeholders, including governments, to achieve policy outcomes with greater speed and flexibility than traditional regulatory structures. Within ICANN, the GAC provides governments a meaningful opportunity to participate in the development of policies related to DNS issues. NTIA represents the U.S. Government in the GAC, which currently has over 100 members.

Over the last six years, NTIA has actively engaged with its counterparts in the GAC in developing consensus advice to inform ICANN's policy development and implementation program for the introduction of new gTLDs. This included the adoption by the GAC in March 2007 of "GAC Principles Regarding New gTLDs" that were intended to inform the on-going policy development process underway in ICANN's Generic Names Supporting Organization (GNSO).<sup>3</sup> The GAC progressively refined its advice to the ICANN Board and community through a series of communiqués issued at the close of each of its meetings between March 2007 and December 2010. This occurred as the new gTLD program advanced from the GNSO policy recommendations that were adopted by the ICANN Board in June 2008 to the implementation proposals developed by ICANN staff and posted serially for public comment.

In December 2010, the GAC developed a "Scorecard" of these outstanding issues governments had with the pending Draft Applicant Guidebook and requested direct discussions between the GAC and the ICANN Board to resolve them.<sup>4</sup> Among these issues were:

- objection procedures for governments,
- procedures for the review of sensitive strings,
- root zone scaling,
- market and economic impacts,
- registry-registrar separation,
- protection of trademark rights and other intellectual property owners,
- consumer protection issues,
- post-delegation disputes with governments,
- use and protection of geographic names,
- legal recourse for applicants,
- providing opportunities for stakeholders from developing countries,
- law enforcement due diligence recommendations, and
- the need for an early warning mechanism for applicants to identify whether a proposed string would be considered controversial or to raise sensitivities.

<sup>2</sup>See <http://newtlds.icann.org/applicants/agb>.

<sup>3</sup>See <http://www.icann.org/en/topics/new-gtlds/gac-principles-regarding-new-gtlds-28mar07-en.pdf>.

<sup>4</sup>See <http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf>.

Between February 2011 and June 2011, GAC representatives from around the world met with the ICANN Board in extended face-to-face discussions to review the GAC Scorecard and to identify specific differences between GAC advice and the existing version of the Applicant Guidebook. The purposes of the sessions were to promote joint understanding of the issues and arrive at an agreed-upon resolution of those differences wherever possible. These unprecedented GAC-ICANN Board exchanges resulted in the adoption by the ICANN Board of a significant number of GAC recommendations in the final Applicant Guidebook. Equally importantly, the GAC's advice established a solid foundation for the subsequent review of the new gTLD program by identifying markers or guideposts of government expectations that the benefits must not be outweighed by risks to users of the DNS.

NTIA believes that ICANN improved the new gTLD program by incorporating a significant number of proposals from the GAC. ICANN's new gTLD program also now provides law enforcement and consumer protection authorities with significantly more tools than those available in existing gTLDs to address malicious conduct. The fact that not all of the GAC's proposals were adopted as originally offered does not represent a failure of the process or a setback to governments; rather, it reflects the reality of a multi-stakeholder model.

### **Going Forward**

As a member of the GAC, NTIA will continue to actively monitor and participate in discussions related to the expansion of new gTLDs within the ICANN process. NTIA appreciates that certain trademark owners and other stakeholders have expressed concerns regarding the new gTLD program. Safeguarding the rights of trademark owners and ensuring appropriate consumer protections as this process moves forward remains apriorit. As applications for strings that are identifiable brands, products, or companies are introduced it will be important to ensure that trademark owners are properly protected. NTIA is committed to working with the U.S. industry and other stakeholders as the new gTLD program unfolds to mitigate any unintended consequences. The Affirmation sets up continuous multi-stakeholder review teams to evaluate ICANN's performance, including a review of the new gTLD program. This review 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 the application and evaluation process, and the safeguards put in place to mitigate issues involved in the introduction or expansion. NTIA believes the review provides an opportunity for stakeholders to further refine the new gTLD program and make adjustments, as needed.

In addition, NTIA intends to collaborate with U.S. Government agencies responsible for consumer and intellectual property protection, competition policy, and law enforcement to track their experiences and to coordinate the collection of data regarding the effects on consumers and business users of the domain name system. In particular, NTIA, working with other agencies, will focus on ensuring that law enforcement concerns are addressed through strengthened Registry and Registrar Accreditation Agreements and enhanced contract compliance. NTIA will also be encouraging all interested parties to collaborate in the development of metrics to facilitate the review of the new gTLD program to which ICANN has committed. We feel strongly that the review must be informed by fact-based, real-time experiences that can be captured by data from a variety of sources.

### **Conclusion**

NTIA is dedicated to maintaining an open, global Internet that remains a valuable tool for economic growth, innovation, and the free flow of information, goods, and services online. We believe the best way to achieve this goal is to continue to actively support and participate in multi-stakeholder Internet governance processes such as ICANN. This is in stark contrast to some countries that are actively seeking to move Internet policy to the United Nations. If we are to combat the proposals put forward by others we need to ensure that our multi-stakeholder institutions have provided a meaningful role for governments as stakeholders. NTIA believes that the strength of the multi-stakeholder approach to Internet policy-making is that it allows for speed, flexibility, and decentralized problem-solving and stands in stark contrast to a more traditional, top-down regulatory model characterized by rigid processes, political capture by incumbents, and in so many cases, impasse or stalemate.

Thank you again, Mr. Chairman for the opportunity to testify this morning. NTIA looks forward to working with Congress, U.S. business, individuals, and other stakeholders to preserve and enhance the multistakeholder model that has been a hallmark feature of global Internet institutions that have been responsible for the success of the Internet.

I will be happy to answer any questions.

Senator KLOBUCHAR. Thank you very much.  
Mr. Pritz.

**STATEMENT OF KURT PRITZ, SENIOR VICE PRESIDENT,  
STAKEHOLDER RELATIONS, INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS (ICANN)**

Mr. PRITZ. Good morning, Senator. I am Kurt Pritz, the Senior Vice President of Stakeholder Relations for ICANN, the Internet Corporation for Assigned Names and Numbers, and I'm very pleased to be testifying before you today.

After more than 7 years of policy development and implementation planning, on January 12 next year ICANN will start receiving applications for new top-level domains, known as TLDs or gTLDs. TLDs are the names to the right of the dot, such as .com or .org. ICANN carefully and cautiously developed the requirements for the new gTLD program. And by ICANN, I mean the global multi-stakeholder community made up of governments, intellectual property experts, consumers, large and small businesses, not-for-profit organizations, Internet security experts, registrants, and Internet users.

The launch of the new gTLD program was part of ICANN's founding mandate when it was formed by the U.S. Government over 12 years ago. That mandate is to introduce competition and choice into the domain name system in a stable and secure manner. There is every reason to believe that the benefits offered by competition in virtually every other market will apply to the introduction of new gTLDs.

Expanding the number of TLDs will encourage innovation and result in competition and increased choice for Internet users. The 7 years of policy work that led to the formation of the new gTLD program was based upon this principle.

In the last decade, the number of domain name registrations has increased nearly tenfold, enabling more than \$3 trillion of commerce annually. As with the introduction of any innovation, new gTLDs will generate interest, excitement, and, yes, require a period of learning. Internet users have already shown a great adaptability and they will find value wherever it is created as a result of this program.

The new TLDs that will come in under this program have significantly increased safeguards compared to TLD registries that exist today. There will be new and extensive protections to trademark holders, including a universal trademark clearinghouse, a rapid takedown process, and new methods of recourse for law enforcement agencies. These new protections, when combined with the distribution of domain names into many new registries, will sharply reduce pressure for defensive registrations.

New TLDs will also bring better consumer and security protections. Security protection experts developed specific measures to combat malicious conduct and provide law enforcement authorities with more tools to fight malfeasance. These include criminal background checks on applicants, a requirement for DNSSEC deployment, the requirement for maintenance of a thick WHOIS data base, and centralized access to all TLD data.

What are some of these potential innovations? Here are some published examples. Dot-brand type TLDs can diminish consumer confusion and develop consumer awareness around the reliability of the website. This is similar to the trust that your constituents have today when visiting a dot-gov website. Consumers know when they type in “Senate.gov” they are reaching the domain of the U.S. Senate.

Financial industry participants are considering a financial services TLD where banks and financial institutions can offer greater trust to their customers, more secure transactions, and control the data flow for those transactions. There are new jobs already created and likely more to come. In preparation for the launch of new TLDs, dozens of small businesses have sprung up to help TLD applicants understand the opportunities and potential benefits of new TLDs.

Lately, innovation has been limited to country code TLDs, such as dot-co and dot-ly, that are developing business models to meet world demand. These TLDs are not under contract with ICANN and not required to offer the protections available in the new gTLD program.

The important issues under discussion before this committee have been the subject of discussion, debate, and compromise for the past 7 years. Not-for-profit organization and trademark holders, along with the rest of the ICANN community, provide the focused and targeted input into the design of this program. Their input has yielded significant improvements through seven versions of the applicant guidebook. Consensus has been reached across the spectrum of participants and the program is better for it. Many stakeholders not represented at this table have also participated in the program and are awaiting their opportunity to take part.

Thanks for inviting me to testify. I'd be happy to answer any questions you might have.

[The prepared statement of Mr. Pritz follows:]

PREPARED STATEMENT OF KURT PRITZ, SENIOR VICE PRESIDENT, STAKEHOLDER RELATIONS, INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)

Chairman, Ranking Member and members of the Committee, thank you for the opportunity to address you today. I am here today representing the Internet Corporation for Assigned Names and Numbers (ICANN). I am Kurt Pritz, ICANN's Senior Vice President for Stakeholder Relations. Among other responsibilities at ICANN, I manage the Program to implement new Top-Level Domains (also referred to as new gTLDs), which is the subject of this hearing.

#### **I. New gTLDs: Safely Bringing Competition and Choice to the Internet**

On June 20, 2011, the ICANN Board of Directors approved the implementation of the New gTLD Program, the culmination of years of policy development by the broad Internet community.<sup>1</sup>

Now is the time for launching that program. It is the product of well thought out, thoroughly debated policies that are designed to benefit the billions of Internet users 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. ICANN extended the discussion to hear all those that wished to participate, to all geographies and all stakeholders. Each issue was thoroughly discussed, there have

<sup>1</sup>ICANN Board Resolution 2011.06.20.01, at <http://www.icann.org/en/minutes/resolutions-20jun11-en.htm>.

been no new issues raised. Now is the time to realize the benefits of an expanded and safer marketplace.

The New gTLD Program was created through input across all sectors, including Internet end users, global Fortune 500 businesses, small businesses, trade associations, governments, non-commercial interests, intellectual property experts, brand holders, Internet security experts, ICANN registries and registrars, domain name registrants, Internet service providers, technical experts, not-for-profit organizations and more.

The planning for the New gTLD Program started in 2005 within ICANN's consensus-based policy development process. Since 2008, the New gTLD Program has been shaped through:

- Seven versions of the *Applicant Guidebook*;
- At least 59 explanatory memoranda and independent reports, including 5 economic studies;
- 47 separate, extended public comment periods;<sup>2</sup>
- Over 1450 pages of summary and analysis on public comments received; and
- Input from no less than ten independent expert and community working groups.

#### *Extensive Protections Will Be Introduced*

The New gTLD Program today includes *significant protections* beyond those that exist in current TLDs, including new mandatory intellectual property rights protection mechanisms and heightened measures to mitigate against malicious conduct. These new protections are intended to provide a safe, stable Internet, and include:

- *New Trademark protections:*
  - 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 rights in ALL new TLDs with one registration
  - Mandatory sunrise *and* Trademark Claims processes for *all* new gTLDs
  - The requirement to maintain thick Whois information, the provision of centralized access to zone file data, and a strong incentive to provide a searchable Whois database—all to make it easier for rights holders to identify and locate infringing parties
  - A post-delegation dispute procedure under which rights holders can assert claims directly against TLD registry operators that play an active role in facilitating domain name abuse.
- *Measures to mitigate malicious conduct:*
  - Background reviews of applicants, including reviews for past 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;
  - A 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 for the domains within each gTLD. This reduces the time necessary to take corrective action within TLDs experiencing malicious activity;

---

<sup>2</sup> Comments came from multiple sources, including: NGOs and not-for-profit organizations, such as the Red Cross and the International Olympic Committee (IOC); governments, through the GAC and individually; ICANN's constituencies, Supporting Organizations and Advisory Committees; brand/mark holders, such as Microsoft, Yahoo, Time Warner, AT&T, BBC, and IBM; industry associations, such as International Trademark Association (INTA), World Intellectual Property Organization (WIPO), European Communities Trademark Association (ECTA), and the American Banking Association (ABA); individuals; small businesses/entrepreneurs and many other groups.

- 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.

#### *Objection Processes*

The New gTLD Program includes robust processes to assure that stakeholders generally, and governments and rights holders in particular, have 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.

#### *Rights and Protections Mitigate Costs*

The existence of objection processes and enhanced rights protection mechanisms were adopted to mitigate the concerns of trademark holders regarding increased costs. With these objection rights, trademark holders have the opportunity to consider whether to apply for a new gTLD based on business needs rather than defensive considerations. These measures greatly reduce the chance that another entity will succeed in applying for the trademarked name. The new rights protections mechanisms also reduce the need for trademark holders to defensively register names across new gTLDs. Further, we’ve learned from prior rounds that trademark holders often do not engage defensive registrations outside of the most popular TLDs.

Additional detail on all of these new protections is provided below.

#### *Competition and Consumer Choice*

The Board’s approval of a program carefully crafted by the global Internet community is consistent with ICANN’s mission to increase consumer choice, competition and innovation. Organizations will now have the opportunity to apply for gTLDs in the scripts of the world’s languages, to open the world’s marketplace further and to welcome the next billion non-English speaking users to the Internet.

The opening of new gTLDs will be limited by round and by demand. Two prior rounds of new TLDs have been limited by size or type—and the restrictions hobbled the realization of benefits. Competition results from opening, not limiting markets, and encouraging investment and innovation.

After years of policy and implementation work, the Internet community and Board determined that the launch of the new gTLD program was necessary and important in order to increase competition and innovation in the DNS—and I strongly believe this remains the right decision.

This testimony provides information on how and why the New gTLD Program was formed and how it serves the public interest to act now.<sup>3</sup>

## **II. Introduction of New Top Level Domains Is One of ICANN’s Founding Mandates**

ICANN is recognized by the world community as the authoritative body for technical coordination and policy development regarding the security, stability and

<sup>3</sup>ICANN has had the opportunity to testify before the House Committee on the Judiciary, Subcommittee on Intellectual Property, Competition and the Internet in September 2009 and May 2011 regarding the New gTLD Program. Information on those proceedings are available at [http://judiciary.house.gov/hearings/hear\\_090923.html](http://judiciary.house.gov/hearings/hear_090923.html) and [http://judiciary.house.gov/hearings/hear\\_05022011.html](http://judiciary.house.gov/hearings/hear_05022011.html).

interoperability of the Domain Name System, or DNS, and we work to maintain a single global Internet. ICANN is organized as a California, public benefit, non-profit corporation. We serve this public benefit through a bottom-up, consensus-based, multi-stakeholder model.

A founding mandate for ICANN, included within the United States Government's "White Paper on the Management of Internet Domain Names and Addresses",<sup>4</sup> is to create competition in the domain name market and specifically, to "oversee policy for determining the circumstances under which new TLDs are added to the root system."<sup>5</sup> The introduction of new gTLDs "has been a longstanding goal" of the relationship between the Department of Commerce and ICANN.<sup>6</sup> The relationship formed with the United States Government in 1998, and set out in the many Memoranda of Understanding between the Department of Commerce and ICANN, included a core objective to "Define and implement a predictable strategy for selecting new TLDs."<sup>7</sup> This fundamental assumption that increasing the number of gTLDs will increase competition resulted in the House Committee on Energy and Commerce initiating a 2001 hearing regarding the potential detrimental effects to competition when ICANN approved only seven of 200 applied-for TLDs in an earlier application round.<sup>8</sup>

### III. The ICANN Model At Work: How ICANN Approved the Expansion of New gTLDs

#### A. ICANN's Multi-Stakeholder Model

ICANN's processes and policy development depend on the engagement of stakeholders around the world. Stakeholders participate in many ways, including participation in the policy development processes, in public comment processes, on advisory committees, and in ICANN's public meetings.

ICANN's model is based on the principle of reaching consensus solutions to difficult problems.<sup>9</sup> Consensus within ICANN does not mean unanimous community support on every issue. The Internet community brings a wide range of viewpoints to the discussions, often with diverging interests. Reaching a thoughtful, negotiated solution that is acceptable to most, and ensures that all viewpoints are considered—that is what ICANN strives to do and has done with this program.

As part of this process, ICANN brings together working groups of experts to recommend solutions for further community review. ICANN works closely with all stakeholders to form consensus-based and community-vetted solutions.

These vital discussions give all interests—including those representative of my fellow panelists—a seat at the table.

ICANN has noted the PR campaign driven by industry groups against the New gTLD Program, and the revisionist history they present.

The six-year inclusive policy development process that led to approval of this Program gave all sectors and industries ample opportunity to contribute their thoughts and convey their concerns. The concerns raised by this group of stakeholders were considered, debated and addressed along with those of many other stakeholders. The record is clear that changes have been made based upon their input.<sup>10</sup>

<sup>4</sup>United States Department of Commerce, *White Paper on the Management of Internet Domain Names and Addresses* ("White Paper"), at [http://www.ntia.doc.gov/ntiahome/domainname/6\\_5\\_98dns.htm](http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm) (June 6, 1998).

<sup>5</sup>*Id.*

<sup>6</sup>Testimony of Fiona Alexander, Associate Administrator, National Telecommunications and Information Administration, June 4, 2009, before the Subcommittee on Communications, Technology, and the Internet, Committee on Energy and Commerce, United States House of Representatives, available at <http://www.ntia.doc.gov/speechtestimony/2009/testimony-associate-administrator-fiona-alexander-issues-concerning-internet-co>.

<sup>7</sup>See, e.g., Amendment 6 to Memorandum of Understanding Between the U.S. Department of Commerce and The Internet Corporation For Assigned Names And Numbers, at [http://www.ntia.doc.gov/ntiahome/domainname/agreements/amendment6\\_09162003.htm](http://www.ntia.doc.gov/ntiahome/domainname/agreements/amendment6_09162003.htm) (Sept. 16, 2003).

<sup>8</sup>See Transcript of February 8, 2001 Hearing before the Subcommittee on Telecommunications and the Internet of the Committee on Energy and Commerce, House of Representatives, On Hundred Seventh Congress, First Session, available at <http://archives.energycommerce.house.gov/reparchives/107/hearings/02082001Hearing37/print.htm> ("some view ICANN's approval of only a limited number of names as thwarting competition").

<sup>9</sup>While my testimony today focuses on implementation of community-driven policy recommendations, the ICANN model is also used in non-policy matters.

<sup>10</sup>For example, the Association of National Advertisers twice provided comments on the New gTLD Program, on December 15, 2008 and April 12, 2009. In 2008, the ANA provided ICANN with a list of five specific proposals for ICANN's consideration within the program. All five of its proposals have been addressed in the current design: trademark protections have been strengthened; there will be greater transparency of applicant data and more consistent informa-

They are now forum shopping and asking Congress to give them another bite at the apple. After working for years within ICANN's multistakeholder framework to obtain significant concessions for intellectual property rights holders, they now seek to upset the carefully crafted compromise which they helped create. They now want ICANN to restart the clock, at the expense of the other important participants who negotiated in good faith and who are eager for the program to launch.

*B. New Generic Top Level Domains—The ICANN Model at Work*

The New gTLD Program demonstrates the strength of the bottom-up, multi-stakeholder process: The New gTLD Program under discussion today is the implementation of an ICANN-community policy recommendation to achieve one of ICANN's foundational mandates.<sup>11</sup> ICANN has worked closely with the community in building policy and an implementation plan.

The New gTLD Program: Formed through Community Engagement

From 2005–2007, business and commercial users, contracted registries and registrars, intellectual property interests, non-commercial users and the at-large Internet community conducted an intensive formal, Bylaws-defined policy development process on the addition of new gTLDs. After intensive policy discussion, *all* those constituency groups concluded that new gTLDs should be made available.

The principles guiding the new gTLD policy development process included that:

- New gTLDs will benefit consumer choice and competition;
- The implementation plan should also allow for Internationalized Domain Names (domain names that are written solely in a non-ASCII script, such as Chinese or Cyrillic) at the top level;
- The introduction of new gTLDs should not cause security or stability issues;
- Applications must be assessed in rounds until the scale of demand is clear; and
- Protection of various appropriate interests requires objection and dispute resolution processes.

In 2008, the ICANN Board approved the policy on the introduction of new gTLDs<sup>12</sup> and directed its implementation. Since October 2008, ICANN has produced all of the documentation cited above—seven versions of the *Applicant Guidebook* (detailing the guidelines and requirements for the evaluation process) as well as numerous report and memoranda. All have been the subject of public comment and vigorous debate. Anyone and everyone can join in; indeed, the process at times has been noisy given the numbers of contributors and divergent views.

Nearly every ICANN Supporting Organization and Advisory Committee was represented in targeted community-based working groups or expert teams formed to address implementation issues, as were representatives from all sectors of society.

The gTLD policy-making body, the Generic Names Supporting Organization, and its component stakeholder groups and constituencies participated in all aspects of the implementation work arising out of its policy recommendations. The Country Code Names Supporting Organization, representing ccTLD operators, was particularly active on issues relating to internationalized domain names in the New gTLD Program.

ICANN's technical Advisory Committees provided direct input into the implementation work. For example, Root Server System operators and Security and Stability

tion available on registrants; registration fees have been studied; objection processes have been clarified and strengthened; and provisions have been made for attaching higher security requirements based on the nature of the string (e.g., an applicant for a financially-related string should have high security capabilities).

<sup>11</sup> In addition to the White Paper, the introduction of New gTLDs was consistently identified as a core objective in each of ICANN's Memoranda of Understanding with the U.S. Department of Commerce (1998–2006) and the Joint Project Agreement, calling for ICANN to “[d]efine and implement a predictable strategy for selecting new TLDs.” See Amendment 6 to Memorandum of Understanding Between the U.S. Department of Commerce and The Internet Corporation For Assigned Names And Numbers, at [http://www.ntia.doc.gov/ntiahome/domainname/agreements/amendment6\\_09162003.htm](http://www.ntia.doc.gov/ntiahome/domainname/agreements/amendment6_09162003.htm) (Sept. 16, 2003). The study and planning stages, extending back several years, include two trial rounds of top-level domain applications held in 2000 and 2003. The experience of those rounds was used to shape the current process.

<sup>12</sup> GNSO Final Report on the Introduction of New Top Level Domains (“Final Report”), at <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm> (Aug. 8, 2007); ICANN Board resolution, <http://www.icann.org/en/minutes/resolutions-26jun08.htm> (June 26, 2008); GNSO Minutes, <http://gns0.icann.org/meetings/minutes-gns0-29oct03.html> (Oct. 29, 2003).

One of the foundational documents influencing the GNSO Final Report and the community's implementation work is the GAC Principles Regarding New gTLDs, at [http://gac.icann.org/system/files/gTLD\\_principles\\_0.pdf](http://gac.icann.org/system/files/gTLD_principles_0.pdf) (Mar. 28, 2007).

Advisory Group members provided information that there is no expected significant negative impact of new gTLDs on the stability and scalability of the root server system.

Members of the At-Large Advisory Committee—the home within ICANN for individual Internet users—served on nearly every working group and team, giving the world’s Internet users a voice in implementation discussions. The At-Large Advisory Committee has been an active participant in the formal public comment process.

(a) Governments Provided Advice and Engaged In Broad, Substantive Consultations on New gTLDs

ICANN’s Governmental Advisory Committee, made up of over 110 of the world’s governments, including the United States of America, has been deeply and effectively involved in the development of the New gTLD Program. The Governmental Advisory Committee also coordinated information exchanges between law enforcement and ICANN.

The ICANN Board and the Governmental Advisory Committee held a series of landmark consultations on the New gTLD Program.

Through accommodations made by both sides,<sup>13</sup> changes were made to the New gTLD Program in each of twelve identified areas including:

- More rigorous trademark protections (making them mandatory and transferring costs to wrongdoers),
- Providing an objection path for governments to avoid delegation of sensitive TLD applications,
- Agreement on a post-delegation economic study to test the results of first set of new gTLDs,
- Agreement that a post-launch study should be conducted on the effectiveness of new trademark protections and any effects on root zone operations, and
- Development of a process for assistance for needy applicants.

Ultimately, mutual agreement among the Board and the Governmental Advisory Committee was reached that, subject to Board approval, the New gTLD Program would proceed to launch, and the process would be self-improving through subsequent studies.<sup>14</sup>

(b) Law Enforcement Agencies Are Active Contributors to the New gTLD Program Work

Law enforcement agencies worldwide have worked closely with ICANN in the new gTLD implementation process, with a goal of reducing domain name abuses. Representatives of U.S. law enforcement agencies played a critical role in proposing standards for background screening for applicants. Law enforcement agencies worldwide, including the FBI, the UK Serious Organized Crimes Agency (SOCA) and the Royal Canadian Mounted Police, supported proposals to aid in the prevention and disruption of efforts to exploit domain name registration procedures for criminal purposes. DNS abuse and security are regularly the subject of collaborative meetings between ICANN and the US law enforcement community, as well as representatives of international agencies.<sup>15</sup> ICANN expects this successful collaboration to continue. To that end, there are formal DNS Abuse sessions at every ICANN public meeting where ICANN and law enforcement representatives come together to advance this important work.

(c) Large and Small Businesses and Corporations Have Helped Shape the Program

Business and industry representatives have participated in the new gTLD implementation process from the beginning, through the GNSO’s Business and Commercial Users Constituency, through trade organizations and individually, and remain involved today. Participation cuts across business size and geography. Many global trade associations and corporations have participated in the online comment forums, either individually or through coordinated responses; similarly, great numbers of small businesses have been active. And the involvement continues.

<sup>13</sup>The final points of discussion between the Governmental Advisory Committee and the Board are collected at <http://www.icann.org/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf>, beginning at page 52.

<sup>14</sup>The Board’s Rationale regarding potential areas of difference with the Governmental Advisory Committee is available at <http://www.icann.org/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf>.

<sup>15</sup>ICANN’s relationships with law enforcement are not limited to the New gTLD Program; ICANN coordinates regularly on security-related issues and to address threats to the DNS.

For example, representatives of Microsoft, Google, Time Warner and the BBC are active members of a current community group working to refine the implementation of the Trademark Clearinghouse, one of the new rights protection mechanisms being launched. Representatives of large and small business have been integral in forming the heightened rights protection mechanisms described above, and have contributed to the development of other portions of the program, including participation in many community working groups.

(d) Intellectual Property Owners/Brandholder Experts have been Involved at Every Step

Members of ICANN's Intellectual Property Constituency actively participated in the policy development concerning the introduction of new gTLDs, including the recommendation that new gTLD "strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law" that was included in the 2007 Final Report approved by the Board.

In March 2009 ICANN formed a team of 18 intellectual property experts from around the world representing the interests of trademark holders, business and trade associations<sup>16</sup>—the Implementation Recommendation Team (IRT).<sup>17</sup> The IRT's work led to the identification of specific rights protection mechanisms that are now included in the *Applicant Guidebook* based on the community and the Governmental Advisory Committee's further input and guidance.

(e) Additional Subject Matter Experts Formed Teams to Combat Malicious Conduct and Strengthen Registrant Protections

In addition to the regular participants in its processes, the ICANN model affords opportunities for experts to provide assistance on particularly challenging topics. ICANN has access to and the ability to form world-class expert groups, for example:

- The Implementation Recommendation Team and Special Trademark Issues team created rights protection mechanisms;
- A Zone File Access Advisory group set out standardized access zone file information to simplify access for those investigating abuses;<sup>18</sup>
- The Security and Stability Advisory Committee discussed tools to mitigate the potential for malicious conduct. Its report provided guidance into the management of glue records;
- A High-Security Zone TLD Advisory Group was formed within ICANN in response to requests from governments and the financial services sector to create higher security requirements for TLDs where users have expectations of higher security;
- The Joint Applicant Support Working Group addressed support for needy applicants, and ICANN is currently considering how to implement the recommendations into the first round of the New gTLD Program;
- The Joint ccNSO–GNSO IDN Working Team discussed issues related to Internationalized Domain Names;
- The Vertical Integration Working Group addressed community solutions to the issue of Registry-Registrar cross ownership;
- The Temporary Drafting Group recommended enhancements to the new gTLD Registry Agreement and post-delegation dispute resolution procedures; and
- The Implementation Assistance Group, comprised of over 50 members representing various perspectives such as intellectual property interests and Registry Operations, are assisting ICANN in implementing specified Clearinghouse processes.

Each group worked openly and transparently, and produced reports available for public comment.

Importantly, ICANN listened to and acted on all work produced by the experts and the more general community and modified *Applicant Guidebook* sections to implement the results of this work.

<sup>16</sup>IRT Membership Directory, at [https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/trademark\\_protection:20090407232008-0-9336/original/IRT-Directory.pdf](https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/trademark_protection:20090407232008-0-9336/original/IRT-Directory.pdf).

<sup>17</sup>IRT Resolution, at <http://www.icann.org/en/minutes/resolutions-06mar09.htm#07> (Mar. 6, 2009).

<sup>18</sup>Zone File Access Advisory Group information and documents are available at <http://www.icann.org/en/topics/new-gtlds/zone-file-access-en.htm>.

## (f) Economic Studies Confirm Overall Benefits of Opening the DNS; Further Studies Would Offer No Benefit

Several expert economic studies have recognized that the fundamental benefits of increased competition (that apply in almost all markets) will also benefit Internet users through enhanced service offerings, competition, innovation and consumer choice in the domain name market.

As the new gTLDs moved closer to launch, there were calls for economic studies to better document the fundamental assumption that increasing the number of gTLDs will increase competition. In response, ICANN commissioned five economic studies that examined anticipated benefits and costs of the New gTLD Program, the effects of price constraints, and the benefits of vertical integration. All support a conclusion that Internet users stand to benefit from the introduction of new gTLDs. Those studies are:

- Dr. Dennis Carlton, Report Regarding ICANN's Proposed Mechanism for Introducing New gTLDs, at <http://www.icann.org/en/topics/new-gtlds/carlton-proposed-mechanism-05jun09-en.pdf> ("Carlton I");
- Dr. Dennis Carlton, Preliminary Analysis Regarding Price Caps for New gTLD Internet Registries, at <http://www.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf> ("Carlton II");
- CRA International, Revisiting Vertical Separation of Registries and Registrars, at <http://www.icann.org/en/topics/new-gtld-crai-report-24oct08-en.pdf>;
- Michael Katz, Gregory Rosston and Theresa Sullivan, An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names, at <http://www.icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf> ("Katz/Rosston Phase I"); and
- Michael Katz, Gregory Rosston and Theresa Sullivan, Economic Considerations in the Expansion of Generic Top-Level Domain Names, at <http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf> (Katz/Rosston Phase II).

The two Katz/Rosston reports were commissioned by ICANN to directly address remaining community questions on the potential costs and benefits of the expansion of the gTLD space. Performed in two phases, Phase I provided a survey of published studies and resources on the potential impacts of new gTLD introduction and examined theoretical arguments on the benefits and costs of increased numbers of TLDs. Phase II provided reports of empirical studies proposed in Phase I, to help assess costs and benefits of new gTLDs.

Katz's and Rosston's work was consistent with the basic findings of the three previous reports, and supported an open approach in which new gTLDs are added to the root, subject to appropriate restrictions and mechanisms (such as rights protection mechanisms) designed to minimize potential costs to trademark holders and others. As discussed above—and as referenced in Katz's and Rosston's work—ICANN has adopted these restrictions, as seen in the inclusion of significant rights protection mechanisms.

What remains clear, as stated by Dr. Carlton, a noted economics professor and former Deputy Assistant Attorney General for Economic Analysis, Antitrust Division, U.S. Department of Justice, from October 2006 through January 2008, is that any resultant *delay of the launch of the New gTLD Program* "is likely inconsistent with consumer interests" and could "substantially reduce [consumer] welfare." [Emphasis added.]<sup>19</sup>

Dr. Carlton explained, "ICANN's plan to introduce new gTLDs is likely to benefit consumers by facilitating entry which would be expected both to bring new services to consumers and mitigate market power associated with .com and other major TLDs and to increase innovation."<sup>20</sup> Delay will inhibit competition in the use of generic, non-trademarked terms, and runs counter to the generally accepted view that market entry benefits consumers by expanding output and lowering price. Potential innovations in the new gTLD namespace will be stifled if limitations to entry are imposed, which would "essentially freeze the number of TLDs fifteen years after the first commercial development of the Internet."<sup>21</sup>

Calling for a delay in the entry of new gTLDs serves to perpetuate existing market conditions: concentration within some existing registries, most generic strings

<sup>19</sup> Carlton I, paragraphs 23, 39 *passim*.

<sup>20</sup> *Id.* at paragraph 23.

<sup>21</sup> *Id.*

unavailable, and those that trade on the value of the current marketplace holding portfolios based upon the value of current .COM names.<sup>22</sup>

ICANN's Board and the Governmental Advisory Committee agreed that further economic study would not be beneficial.<sup>23</sup> Instead, the focus turned to the collection of information that will inform the analysis of the effects of the introduction of new gTLDs after the first round. The *Applicant Guidebook* now includes application questions to collect information relating to the stated purposes and anticipated outcomes of each application, for use in later studies.

#### IV. The Protections In the New gTLD Program are Substantial

The implementation of the community's policy for the New gTLD Program looks entirely different today than in October 2008. The many revisions to the *Applicant Guidebook* incorporated recommendations and addressed concerns raised by intellectual property holders, governments, law enforcement and security experts, technical experts, business interests, non-commercial interests, individual Internet users, and others.

Below are highlights of the results of the community's work.

##### A. Trademark Protection: New gTLDs Will Have Robust Rights Protection Mechanisms (RPMs) to Protect Marks and Combat Cybersquatting

New gTLDs will have significant RPMs that don't exist in current gTLDs.

The RPMs will help rights holders protect trademarks efficiently, in terms of both time and money. When new gTLDs launch, trademark holders will have the opportunity to register their trademarks in a single repository that will serve *all* new gTLDs, the Trademark Clearinghouse. (Currently, trademark holders go through similar rights authentication processes for *each separate* top-level domain that launches.)

New gTLD registries are required to use the Trademark Clearinghouse in two ways. First, they must offer a "sunrise" period—a pre-launch opportunity for rights holders to register names in the new gTLD prior to general registration. Second, a Trademark Claims service will notify rights holders ("Trademark Claims") of domain name registrations that match records in the Clearinghouse for a period of time at the beginning of general registration.

The Trademark Clearinghouse will increase protections, as well as reduce costs for trademark holders and start-up registries.

Also with new gTLDs comes the advent of the Uniform Rapid Suspension system (URS), a streamlined version of the Uniform Domain Name Dispute Resolution Policy (UDRP) process, allowing trademark holders a quicker and simpler process through which clear-cut cases of infringing registrations can be "taken down." The URS and the current UDRP will remain mandatory within new gTLDs.

New gTLDs offer protections to trademark holders in the event a registry is actively involved in domain name abuse. The Post-Delegation Dispute Resolution Procedure (PDDRP) provides a mechanism to make claims directly against registries affirmatively involved in abuses involving domain name registrations.

These RPMs are contemplated to address the issues raised in the economic studies as a means of reducing the potential costs associated with the introduction of new gTLDs.<sup>24</sup> Opponents of the new gTLD process have mischaracterized the fact that economists identified specific areas of risk that could be mitigated (such as intellectual property protection costs) as a conclusion that the New gTLD Program will result in net economic harm. As ICANN has explained previously, that is an unsupported reading of the economic studies. The economists noted the benefits of innovation, competition and choice, and concluded that risks and costs could be mitigated through the implementation of RPMs and other mechanisms such as malicious conduct mitigation measures.

The rights protection mechanisms in the *Applicant Guidebook* provide trademark holders with an alternative to engaging in defensive registrations.<sup>25</sup> The provision of effective rights protection mechanisms is shown to reduce the need for trademark holders to engage in defensive registrations—but the rights protection mechanisms

<sup>22</sup> Katz/Rosston Phase II, at paragraphs 75–76.

<sup>23</sup> Rationale for the Board's decision that no further economic studies would be beneficial at this time is available at <http://www.icann.org/en/minutes/rationale-economic-studies-21mar11-en.pdf>.

<sup>24</sup> See, e.g., Katz/Rosston Phase II at paras 64–65, 120.

<sup>25</sup> See Dr. Dennis Carlton, "Comments on Michael Kende's Assessment of Preliminary Reports on Competition and Pricing", at [https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/tld\\_demand\\_and\\_economic\\_analysis:20091007232802-2-13939/original/carlton-re-kende-assessment-05jun09-en.pdf](https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/tld_demand_and_economic_analysis:20091007232802-2-13939/original/carlton-re-kende-assessment-05jun09-en.pdf) (June 5, 2009).

cannot be too strict, or the growth of a new TLD may be impaired.<sup>26</sup> Unsubstantiated fear of forced defensive registrations is not sufficient reason to stall new gTLDs and delay the benefits of introducing competition into the DNS.

In addition, Economic studies refuted the claims that costs of defensive registrations in new gTLDs will be prohibitive. Independent studies support the conclusion that as defensive registrations are made in proportion to the popularity of the gTLD, the large majority of defensive registrations are in .COM and .NET.<sup>27</sup> Only if a new gTLD is very popular will there be a significant need for defensive registrations. But, it also follows that if a new gTLD is popular, then it likely is delivering high benefits. Thus, the dual claims of low benefits and high defensive registration costs are unlikely to be simultaneously true.

#### *B. Consumers Will Be Protected Through Efforts to Mitigate Malicious Conduct*

The expert and community work to address the potential for increased malicious conduct in new gTLDs has generated many enhanced protections in the *Applicant Guidebook*. With the assistance and involvement of external experts such as the Anti-Phishing Working Group, the Registry Internet Safety Group, members of the Forum of Incident Response and Security Teams (FIRST), and others from the Internet security first responder community, nine specific mechanisms were developed that will improve consumer protection<sup>28</sup> and enhance the public interest. They include:

- Prospective registry operators will be appropriately reviewed for criminal history according to established criteria, including the use of telecommunications or the Internet to facilitate crimes, illegal sale of drugs, violation of the UN Convention against Transnational Organized Crime and others. 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 under the US Anti-cybersquatting Consumer Protection Act (ACPA) or equivalent legislation, applications will be rejected.
- Each new gTLD will be required 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.
- Enhanced, or “thick” WHOIS records at the registry level will allow more rapid search capabilities to facilitate efficient resolution of malicious conduct activities.
- A centralized zone file access system allows for easier dissemination of registrant data, reducing the time necessary to take corrective action against registrants.
- All new gTLD operators are required to establish a single point of contact responsible for the handling of abuse complaints. This requirement is a fundamental step in successfully combating malicious conduct within new gTLDs.

Mitigating malicious conduct is and will continue to be an overarching issue within the new gTLD space. The participation of experts has produced mechanisms to benefit all Internet users, providing means for safer online interactions. The contributions of the Governmental Advisory Committee and law enforcement representatives broadened the scope of these protections.

#### *C. Registrant Protections Regarding Registry Operator Continuity and Compliance*

In addition to the protections in existing gTLDs, such as data escrow provisions, and participation in Contractual Compliance investigations, there are notable new protections in the New gTLD Program regarding the activities of Registry Operators. New gTLD Registry Operators must:

- Maintain a Continued Operations Instrument sufficient to fund basic registry operations for 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. In the event transition to a new registry operator is necessary, the registrar is obligated to cooperate with ICANN. ICANN is working to identify an Emergency Back-End Registry Operator to assist in the registry transition process and pro-

<sup>26</sup> Katz/Rosston Phase II, at page 52.

<sup>27</sup> See [http://www.circleid.com/posts/20090202\\_analysis\\_domain\\_names\\_registered\\_new\\_gtlds/](http://www.circleid.com/posts/20090202_analysis_domain_names_registered_new_gtlds/).

<sup>28</sup> While not related to mitigating malicious conduct, consumers and registrants will also be protected due to the work done on registry continuity and the creation of new transition procedures for use in the event of registry failure.

vide emergency registry services as needed. The continuity and transition planning mitigates the potential risk of consumer losses due to registry failure raised within the economic studies.<sup>29</sup>

#### *D. Objection Processes Empower the Public and Governments*

After the application round closes, information on applied-for gTLDs will be made public. At that time, entities and individuals can review the list of strings and consider if they wish to object to any individual application.

The New gTLD Program allows the Governmental Advisory Committee to inform ICANN that there are concerns with an application. Depending on the level of support within the GAC, the advice may result in a presumption that the Board should not approve the application.

There are also four formal objection processes that can be initiated by the public, each administered by a well-known international dispute resolution service provider and protecting against:

- Internet User Confusion;
- Infringement of legal rights, particularly intellectual property rights;
- Approval of new TLDs 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, an Independent Objector will be appointed with the ability to file objections in certain cases where an objection has not already been made to an application that will infringe the interests listed above. The Independent Objector will act solely in the best interest of the public.

### **V. ICANN is Committed to an Orderly Implementation of the First Round of the New gTLD Program**

ICANN's role in the New gTLD Program is to ensure that the program is fairly, objectively and successfully implemented.

#### *A. ICANN Is Operationally Ready to Administer the New gTLD Program*

ICANN's New gTLD Program Office: ICANN will operate a timely, predictable, transparent, consistent program. ICANN is working to ensure operational readiness for an orderly implementation, including enhanced security for the application and evaluation systems to prevent inappropriate access to the infrastructure or data.

Evaluation service providers have been selected: Each has the global and technical knowledge and resources to accomplish the planned work. The gTLD Program Office includes separate quality assurance, governance, systems and customer service functions. Evaluation service providers are completing training to normalize scoring procedures.

ICANN-Provided Services: ICANN has developed detailed staffing plans for all services to ensure adequate administration and enforcement of its agreements, and for addressing needs the new environment. Particular focus is being paid to contractual compliance, IANA and other functions that formally interface with gTLD registries and registrars.

Creation of new systems: ICANN is creating new business systems that will contribute to its ability to administer this program. Examples include the TLD Application System, contractual compliance tracking, and root zone management automation.

#### *B. The First Round is Limited in Delegation Rate And Incorporates Other Measures to Assure Root Zone Security and Stability*

ICANN's paramount mission is to ensure the security, stability and resiliency of the Domain Name System. ICANN's technical community has reported that new gTLDs, in the numbers contemplated, represent no risk to the safe, stable operation of the Internet's root zone. In furtherance of its mission, ICANN has made commitments regarding the size and staging of the first round.<sup>30</sup> ICANN also makes the following commitments:

<sup>29</sup>As a companion protection for registry operators that maintain exclusive use over all registrations within a TLD—such as brand holder—in the event of registry failure, ICANN may not transfer registry operations without the consent of the registry operator.

<sup>30</sup>While rates of 215–240 new gTLDs are expected over a one-to-two year period, it has been determined that the root zone servers can readily accommodate maximum rates of 1000 delegations per year. See October 2010 Root Zone Scaling reports are available at <http://>

- The impact of first round delegations on root zone stability will be studied.
- Although extremely unlikely, if the root server system shows signs of stress, the process can quickly be halted to preserve stability, using dedicated communications and monitoring systems.

*C. ICANN is Committed to a Second Round of the New gTLD Program, Taking into Account Community Comment*

One of the initial policy recommendations arising out of the Generic Names Supporting Organization is that, “[t]his policy development process has been designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains. The Request for Proposals (RFP) for the first round will include scheduling information for the subsequent rounds to occur *within one year*. [Emphasis added.]”<sup>31</sup>

The application round opening on January 12, 2012 is for those entities that are ready to participate in the expansion of choice and innovation in the DNS. There are many who may not be ready, or want to view the progress of the first round prior to taking a decision. They should not feel compelled to participate in the first round—future opportunities will exist.

ICANN is working to identify a clearer timeline for the second round. We have heard the calls from many in the community that certainty in the timing of the second round will reduce some of the pressure to apply in the first. ICANN has agreed with governments and trademarks holders that a second round should occur only after:

- Studying the impact of first round delegations on root zone stability.
- Conducting a post-first round study on whether new trademark protections should be adjusted.

The first new gTLDs are expected to be operational in early 2013 and ICANN will undertake these studies at the earliest opportunity as is practicable—as soon as meaningful data is available.

*D. Innovation and Jobs are Waiting*

Many new businesses have been formed based on progress in implementing this Internet community-developed program. Some are potential applicants; some will “provision” applicants. For at least the past two years, future applicants have attended ICANN meetings, passing out marketing materials with their “dot-NEWDOMAIN” prominently displayed. Consulting businesses to advise applicants have arisen. Over 120 persons or entities have publicly announced their intention to apply for new gTLDs. Nearly 90 declared applicants have active websites marketing their new gTLD idea proposing all types of gTLDs—city names, community ideas, branding opportunities for internationally known corporations and others. American jobs are already being created, and more will be when the program becomes a reality.

We will never know the opportunities and creativity that will come through the introduction of new gTLDs will produce until we move forward. When ICANN was in its infancy, who could have predicted the online possibilities we take for granted today? Since 1999, the Internet has generated new companies and innovative ideas including marketplaces for commerce, communications and social networking: Facebook, Google and Twitter. New gTLDs hold that same potential for innovation.

## **VI. ICANN Is a Reliable Steward of the DNS**

ICANN continues to accomplish much for the benefit of the global Internet community beyond the New gTLD Program. Recent achievements include:

*A. Fulfilling the Affirmation of Commitments*

On September 30, 2009, ICANN and the US Department of Commerce executed the Affirmation of Commitments, a landmark agreement. The Affirmation institutionalizes ICANN’s technical coordination role and the US Government’s commitment to the multi-stakeholder model. The Affirmation also sets out specific commitments on accountability, transparency and the interests of global Internet users; preservation of DNS security, stability and resiliency; promotion of competition, con-

[www.icann.org/en/announcements/announcement-2-06oct10-en.htm](http://www.icann.org/en/announcements/announcement-2-06oct10-en.htm), and the public comment fora can be accessed from there as well. See also Letter from Jun Murai, Chair of RSSAC, <http://www.icann.org/en/correspondence/murai-to-board-25nov10-en.pdf> (25 November 2010).

<sup>31</sup>GNSO Summary of Policy Recommendations, at <http://gns0.icann.org/issues/new-gtlds/summary-principles-recommendations-implementation-guidelines-22oct08.doc.pdf>.

sumer trust and consumer choice; and enforcement of Whois policies. These commitments are woven into ICANN's ongoing work.

ICANN dedicates significant time and resources to meeting its commitments under the Affirmation and continues to build on the significant progress it has already made. The Affirmation is not just a reflection of the Department of Commerce's commitment to the multi-stakeholder model; it is ICANN's commitment to the global Internet community to operate with *greater* accountability and transparency.

What has ICANN achieved to date?

- In coordination with the community, ICANN has initiated the three reviews called for in the Affirmation: Accountability and Transparency; Security and Stability; and Whois.
- Within weeks of completion of the public comment period on the Final Report of the Accountability and Transparency Review Team (ATRT),<sup>32</sup> staff completed detailed implementation plans to meet the recommendations. The Board has decided that all recommendations should proceed to implementation, and the committees of the Board have been active in oversight of ATRT implementation.
- ICANN is now:
  - Publishing translations of Approved Resolutions for all Board meetings and of the Minutes of Board meetings.
  - Developing and posting the rationale for Board actions. This includes rationales for all new gTLD-related actions in 2011, including the Board's decisions on Registry-Registrar Cross Ownership, and the Completion of Economic Studies, and eight additional rationale papers produced to accompany approval of the New gTLD Program.
  - Posting Board Briefing Materials along with the Minutes of each Board meeting, as well as *Guidelines for the Posting of Board Briefing Materials* to better explain the redaction process.
  - Using a standardized public comment template to allow for easier understanding and identification of the items posted for comment.
  - Refining the public comment process to allow for comment and reply cycles.
  - Consulting with the Governmental Advisory Committee on implementation of GAC-related ATRT recommendations, including work to create a publicly-accessible registry of GAC advice.
  - Including a template for the submission of Reconsideration Requests, as well as maintaining clearer status of Reconsideration Request ICANN's website.
  - Continuing to evaluate the work of an Independent Valuation Expert regarding Board-member compensation (an ATRT recommendation).
  - Designing the appropriate scope of an independent expert review of ICANN's accountability mechanisms.

ICANN is committed to meeting all of its commitments under the Affirmation of Commitments, and will continue to report on the status of that work through the ICANN website.

#### *B. Conflicts of Interest Policy Refinements and Enhancing ICANN's Ethical Culture—Towards a Gold Standard*

ICANN maintains a strong policy regarding the identification and handling of Board member conflicts of interest, as well as a Code of Conduct setting out the ethical standards to which Board members are expected to adhere.<sup>33</sup> In addition, all ICANN staff are bound by a conflicts of interest policy. Prior to the June 2011 approval of the New gTLD Program, ICANN's President and CEO issued a public call that the era of New gTLDs requires ICANN to be even more vigilant in addressing conflict of interest issues.

Work is now well underway with towards strengthening conflicts and ethics practices. ICANN intends to meet or create a gold standard for not-for-profit organizations. This work includes: (1) review of Conflicts of Interest Policy and Code of Conduct by one of ICANN's main outside counsel, to identify proposed revisions; (2) a

<sup>32</sup>The ATRT Report is available at <http://www.icann.org/en/reviews/affirmation/activities-1-en.htm>.

<sup>33</sup>For an example of the application of the Conflict of Interest policy within the New gTLD Program deliberations, Board members and Liaisons regularly identify particular areas of interest that require the members to refrain from voting on issues, or refrain from participating in deliberations, as reported at <http://www.icann.org/en/minutes/minutes-25sep10-en.htm>.

review of ICANN's Conflicts of Interest Policy, Code of Conduct and other governance documents by new counsel who are expert in governance issues; and (3) compiling a panel of international ethics experts to recommend enhancements to ICANN's ethical culture after a review of standards from similar organizations from around the world.

The ICANN Board is also voluntarily adopting a stricter conflicts of interest practice for New gTLD-related decisions, and staff are subject to restrictions regarding contact with potential New gTLD applicants. They are prohibited from accepting any gifts, meals or entertainment from potential New gTLD applicants.

#### *C. Registrar Accreditation Agreement Amendments*

ICANN and its accredited registrars are currently negotiating a series of amendments, many addressing concerns raised by law enforcement authorities from around the world. The negotiation team has agreed to a demanding schedule to achieve a set of amendments for consideration at ICANN's next public meeting in March 2012. The team has already agreed in principle to the incorporation of some of the heightened protections that will be imposed on registry operators within the New gTLD Program, such as the maintenance of an abuse point of contact. All of the newly adopted and heightened consumer and law enforcement protections will be in place in time for the launch of the first new gTLDs.

The negotiations team is providing regular updates on the status of negotiations, available at <https://community.icann.org/display/RAA/Home>.

#### *D. Internationalized Domain Names*

In October 2009, ICANN approved the IDN ccTLD Fast Track Process through which countries and territories around the world can apply for TLDs in character sets other than Latin-based script.<sup>34</sup> Through this process, 30 IDN ccTLDs are now available on the Internet<sup>35</sup> with more on the way. This has opened the Internet to additional billions in China and India alone.

#### *E. DNSSEC*

The Internet is becoming more secure. Following years of development and testing, on July 15, 2010, ICANN, in partnership with VeriSign and the US Department of Commerce, published the root zone trust anchor and a signed root zone became available.<sup>36</sup> The implementation of DNSSEC (or DNS Security Extensions) will allow Internet users to know with certainty that they have been directed to the website they intended. This technology will help eliminate a whole class of security threats to the Internet.

ICANN is in active engagement with all registry operators to encourage adoption. As a result, over 75 gTLDs and ccTLDs now deploy DNSSEC; most significantly, the .COM registry adopted DNSSEC on March 31, 2011. DNSSEC will be mandatory in all new gTLDs.

ICANN's work as the DNSSEC Root Zone Key Signing Key (RZ KSK) Manager recently achieved an unqualified SysTrust Certification following an audit to ensure appropriate internal controls are in place to meet the availability, processing integrity and security objectives for the RZ KSK System. ICANN will renew its certification annually.

#### *F. Root Zone Management Automation*

In performance of the IANA Function Contract, ICANN has partnered with VeriSign and the Department of Commerce to automate changes to the root zone. The root zone holds the authoritative directory of top-level domains. This automation will make the processing of change requests more efficient, and will enable all who participate in the change process to be better prepared for the increase in root zone changes that will occur through the New gTLD Program.

#### *G. Continued Enforcement of Registrant Protections*

Another achievement for the benefit of the global Internet community is the continuous improvement in contractual compliance work. ICANN remains vigilant in its contractually-based consumer protection work and has strengthened the compliance team. The contractual compliance team is now comprised of 8 members, proficient in multiple languages, which has increased capacity as well as ICANN's abil-

<sup>34</sup>The IDN ccTLD Process was created after consultation and planning with the ccNSO (Country Code Names Supporting Organization) and the GAC.

<sup>35</sup>These IDN ccTLDs represent 20 countries and territories. Due to language difference in country, for example, India has IDN ccTLDs delegated in seven separate scripts.

<sup>36</sup>Information on DNSSEC deployment can be found at <http://www.root-dnssec.org/>.

ity to communicate with its diverse group of contracted parties on compliance-related matters.

Since 2008, ICANN has either terminated or denied renewal of 43 accredited registrars, and issued thousands of compliance notices. Other significant progress includes the relatively recent implementation of registrar data escrow where all registrar data is escrowed by ICANN so that in the event of a registrar failure or termination, the data can be transferred to a successor registrar in order to protect registrants and their web sites. Over 99% of gTLD registrations are covered by ICANN's registrar data escrow agreements.

ICANN continues to explore ways to identify registrar noncompliance early, take action swiftly to bring registrars back into compliance and terminate those that undermine the domain name registration process. This compliance activity helps ensure a healthy Internet ecosystem.

In early 2011, ICANN enhanced its Whois Data Problem Report System (WDPRS), a system that contributes to Whois accuracy.

## **VII. 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. Thousands of pages have been carefully written, balancing expert analyses, independent study, and thousands of comments. 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.

Thank you for the opportunity to address this Committee. I look forward to answering any questions that you have during the hearing.

Senator KLOBUCHAR. Thank you very much.

Ms. Williams.

## **STATEMENT OF ANGELA F. WILLIAMS, GENERAL COUNSEL, YMCA OF THE USA**

Ms. WILLIAMS. Good morning, Senator Klobuchar. Thank you so much for having us testify this morning. I'm Angela Williams, General Counsel of YMCA of the USA. As you know, the YMCA is the nation's leading nonprofit committed to strengthening communities through youth development, healthy living, and social responsibility. Last year, in 10,000 communities our Ys served 21 million people, of whom 9 million were young people, and we serve them in every Congressional district in this great country. Thank you all for your many years of support to our local Ys.

I'm here today to speak on behalf of the Not-for-Profit Operational Concerns Constituency, known as NPOC, which is the newest constituency formed under ICANN to give not-for-profits and NGO's a voice in Internet governance. Our diverse membership includes groups within the United States, such as American Red Cross, St. Jude's Children's Hospital, Church of God in Christ, World Wildlife Federation, Human Rights Campaign, and Goodwill Industries International. Internationally, our members range from the Association of NGO's in Gambia to the International Baccalaureate Organization in Switzerland and many others.

The NPOC members, like most not-for-profits, increasingly rely on the Internet to fulfil our missions as well as to raise funds. We share a growing concern that our ability to carry out our collective missions due to the enormous cost and financial burdens of the proposed structure of the new Generic Top-Level Domain Name Program will pose severe hardship and burdens on each of us.

The new gTLD program compromises use of the Internet by increasing the risk of fraud, cybersquatting, and trademark infringement, and by significantly escalating the cost to protect against

such unlawful activities. I know firsthand at the Y that our local organizations have been hit hard by the economy. Our name and reputation is priceless. Yet these additional costs to protect them are now out of financial reach.

It is the goal of our organizations to educate all those responsible for implementation of the new gTLD program about unintended consequences. There is no doubt it will have a crippling effect upon my organization and most other not-for-profit organizations here and around the globe in its current form.

Let me speak to our budgetary concerns. The ultimate cost in proceeding through the entire application process alone could reach several hundred thousands of dollars. Currently the ICANN website quotes costs for one new gTLD application to be approximately \$185,000, with an annual cost thereafter of at least \$25,000 for a required 10-year term. This does not include the legal fees required to prepare the application and certain amounts required to be in escrow.

If the Y or another NPOC member chooses not to participate in the new gTLD program, it runs the risk that another entity will apply for use of its name or one that is confusingly similar. The costs for filing an objection are expected to be approximately \$30,000 to \$50,000.

ICANN's new gTLD program does not provide special or discounted protection measures for not-for-profit organizations to protect their brands and avoid the public confusion that results from their unauthorized use. YMCA of the USA currently employs 1.5 full-time employees at a cost of \$225,000 annually, in addition to external legal expertise at a cost of over \$100,000 just this year, in an effort to monitor and protect the use of its trademarks. Many other not-for-profit organizations cannot afford this expense to protect their name and goodwill. The increase of new gTLDs will further exacerbate this problem.

If not-for-profit organizations cannot afford to register the domain names in the first place, they certainly will not have the means to take legal action, nor should they, as their funds are better served fulfilling their mission. Our country's diverse 1.5 million not-for-profits share one central commitment: improving lives. I ask each of you to think about the small and large not-for-profits that work alongside government, our work on most, if not all, of our nation's greatest problems. I ask you to look at this issue through the lens of the not-for-profit organizations who are using limited resources to do much good.

Thank you.

[The prepared statement of Ms. Williams follows:]

PREPARED STATEMENT OF ANGELA F. WILLIAMS, GENERAL COUNSEL,  
YMCA OF THE USA

Good morning Chairman Rockefeller and Ranking Member Hutchison and Committee Members. I'm Angela Williams, General Counsel for the YMCA of the USA. As each of you know, the YMCA is the Nation's leading nonprofit committed to strengthening communities through youth development, healthy living and social responsibility. We work side-by-side with our neighbors in more than 10,000 communities to make sure that everyone, regardless of age, income or background, has the opportunity to learn, grow and thrive. Last year, our Ys served 21 million people—about 9 million were youth—and we serve them in every congressional district in

this great country. Thank you all for your many years of support of local Ys in your district. I know you all have a long history with the Y!

I'm here today to speak on behalf of the Not-for-Profit Operational Concerns Constituency known as NPOC, which is the newest constituency formed under ICANN to give not-for-profits and NGOs a voice in Internet governance. Our diverse membership includes groups within the United States such as American Red Cross, St. Jude's Children's Research Hospital, World Wildlife Federation, Church of God in Christ, Human Rights Campaign and Goodwill Industries International. Internationally, our members range from the Association of NGOs in Gambia to the International Baccalaureate Organization in Switzerland and many others.

The NPOC members, like most not-for-profits, increasingly rely on the Internet to fulfill our missions as well as to raise funds. We share a growing concern that our ability to carry out our collective missions due to the enormous cost and financial burdens of the proposed structure of the new Generic Top-Level Domain Name Program ("new gTLD Program") will pose severe hardship and burdens on each of us. We also share concern about the increased risk of public confusion, often unique to not-for-profit organizations, resulting from unauthorized use of organizational trademarks. I know firsthand at the Y that our local organizations have been hit hard in this economy. Our name and reputation are priceless, yet these additional costs to protect them are now out of financial reach.

The new gTLD Program compromises use of the Internet by increasing the risk of fraud, cybersquatting, and trademark infringement and by significantly escalating the cost to protect against such unlawful activities. The following are areas of particular concern:

- domain name registration
- the introduction of new top level and second level domain names into the DNS (Domain Name System)
- fraud and abuse, and
- using the Internet platform to distribute and collect mission-related information for our members and the communities we serve.

It is the goal of our organizations to educate all those responsible for implementation of the new gTLD program about unintended consequences. There is no doubt it will have a crippling effect upon my organization and most other not-for-profit organizations here and around the globe in its current form.

#### **Budgetary Concerns**

I'd like to begin with our budgetary concerns.

The ultimate cost in proceeding through the entire application process alone could reach several hundred thousands of dollars. Currently, the ICANN website quotes costs for one new gTLD to be approximately \$185,000 to file an application, with an annual cost thereafter of at least \$25,000 for a required ten-year term. This does not include the legal fees required to prepare the application and certain amounts required to be in escrow. Moreover, there are many additional potential costs. For example, if an application is filed and then placed into an extended evaluation by ICANN, the applicant may have to pay an additional \$50,000. An applicant may be required to defend its application against objections, which range from \$1,000 to \$5,000 in filing fees per party per proceeding, and an additional \$3,000 to \$20,000 in costs per proceeding, which must be paid up front.

If the Y or another NPOC member chooses not to participate in the new gTLD program, it runs the risk that another entity will apply for use of its name or one that is confusingly similar. In the event another entity applies for a top-level domain that contains the organization's name, the costs for filing an objection are expected to be approximately \$30,000-\$50,000.

While processes such as these may be useful in the commercial space, not-for-profits simply do not have the resources to participate, and will certainly not be able to compete against for-profit organizations with large budgets and reserves for intellectual property protection. Our sector not only prefers to, but must, use our monies to provide critical services to our communities. We simply cannot afford thousands of dollars to become a domain name registry solely to ensure brand protection. Becoming a domain name registry is not part of the mission of any not-for-profit organization, yet protection of its reputation is critical. ICANN's new gTLD Program does not provide special or discounted protection measures for not-for-profit organizations to protect their brands and avoid the public confusion that results from their unauthorized use. YMCA of the USA currently employs 1.5 full-time employees at a cost of \$225,000 annually, in addition to external legal expertise at a cost of over \$100,000 this year alone, in an effort to monitor and protect the use of its trade-

marks. Many other not-for-profits cannot afford this expense to protect their name and goodwill. The increase of new gTLDs will further exacerbate this problem.

The primary enforcement mechanism of the new gTLD Program is the Trademark Clearinghouse, where trademark owners can protect their registered trademark rights. The new gTLD Program is due to be rolled out in less than 40 days. At this point, the cost of listing marks in the Clearinghouse has not been set, creating more uncertainty about the actual costs associated with the new gTLD Program.

This process will only apply to exact matches of trademarks, rather than common misspellings, etc. that fraudsters and cybersquatters often use to deceive and confuse Internet users attempting to locate a particular not-for-profit. Not-for-profits are not in a financial position to register their marks using hundreds of additional gTLDs, particularly at premium prices. Trademark owners will not be allowed to preemptively register marks that are nearly identical.

If not-for-profit organizations cannot afford to register the domain names in the first place, they certainly will not have the means to take legal action, nor should they, as these funds are better served fulfilling their humanitarian, philanthropic, education, academic, religious, community-based, promotion of the arts, public interest policy advocacy, health-related services and social inclusion missions.

### **Public Confusion and Cybersquatting Concerns**

Our ability to ensure that the public knows and trusts the public face of the Internet for all of our organizations is paramount. The public trusts the high-quality, reliable services they have come to associate with these organizations.

Bad actors in the domain name space such as cybersquatters, fraudsters, and others, who register and use domain names in bad faith to profit off of the goodwill of well-known entities, have existed for many years in the existing domain name space. Recently one of our organizations, a large and historic organization, learned that an unauthorized entity was using its name to fundraise online and in the community. The result was confusion by potential funders about which organization was seeking donations. This is a common example of how our organizations are impacted by trademark infringement.

The likely increased public confusion and fraud that will occur in the new gTLD space will be particularly devastating for not-for-profit organizations. If not-for-profit organizations are not able to adequately protect their names and trademarks in the new gTLDs, bad-faith domain name registrants will be able to register and make use of hundreds of domain names that are identical or similar, and to disseminate dangerously false information to

Internet users. This will greatly increase the likelihood that the public will be misled in a manner that is both financially devastating and dangerous to the reputation of those organizations—making it difficult for them to achieve their worthy missions.

Our country's diverse 1.5 million not-for-profits share one central commitment: improving lives. The ability to fund and focus on this important work will be diverted, and the public will suffer as a result of the new gTLD Program. Current protection mechanisms built into the new gTLD Program are not adequate and are expensive for those not-for-profits that wish to take advantage of them. The NPOC is understandably concerned about the impact on not-for-profit organizations that do not have the budget to enforce their rights in the current space, much less if that space were to increase ten-fold. The expense of the new gTLD Program would greatly divert funds from our central commitment to improve lives.

### **Recommendations**

Our fears are not alone. There has been a ground-swell of Internet stakeholders, including the largest for-profit companies that have repeatedly expressed concerns about the program beginning in January 2012 when so many vital issues remain unresolved.

Therefore, we ask that there continue to be input from stakeholders, and careful consideration of the impact of this program on the Internet, and particularly on not-for-profits. Among the numerous requests the NPOC has made to ICANN, we bring the following to your attention:

- That verified not-for-profit organizations be permitted to exempt their trademarks from any other applicant in the new gTLD Program at no cost, or if that is not possible, then at a drastically reduced fee;
- That the mechanisms for trademark protection be significantly strengthened, with the ability to proactively protect trademark owners before any application is accepted; and

- That the costs to participate in the new gTLD Program for verified not-for-profit organizations be eliminated, or if not possible, then at a drastically reduced fee.

In summary, thank you for your time and attention. I know that in Health Care Reform you heard the concerns of small not-for-profits and provided the same “claw back” for health insurance premiums for small not-for-profits as you have for small business. Time and again this committee has shown interest and common sense in protecting our precious not-for-profit sector from tremendous financial burden that will inhibit our ability to achieve our missions. I ask each of you to think about all the small and large not-for-profits that make our country and our world a better place to call home; our work alongside government; our work on most, if not all, of our nation’s greatest problems. I ask you to look at this issue through the lens of the not-for-profit organizations in this country who are using limited resources to do much good.

Chairman ROCKEFELLER. You’re still Chairman.  
 Senator KLOBUCHAR. Mr. Jaffe.

**STATEMENT OF DANIEL L. JAFFE, EXECUTIVE VICE  
 PRESIDENT, GOVERNMENT RELATIONS,  
 ASSOCIATION OF NATIONAL ADVERTISERS (ANA)**

Mr. JAFFE. Mr. Chairman, Senator Klobuchar: I am Dan Jaffe and I am Executive Vice President, Government Relations, for the Association of National Advertisers, and we very much appreciate the opportunity to testify on behalf of ANA and CRIDO, the Coalition for Responsible Internet Domain Oversight. CRIDO is a coalition of 152 major national and international companies and trade associations united in opposing the virtually unlimited rollout of ICANN’s new generic Top-Level Domain name (gTLD) program.

The members of the coalition, CRIDO, include many of the world’s largest companies, with thousands of brands that consumers know and trust. They represent virtually every sector of the American and international economies. These are the companies which provide the economic foundation for the global marketplace we all use and enjoy.

ICANN’s decision to embark on an explosive expansion of top-level domains is a very significant and fundamental decision, with implications for everyone in the entire Internet ecosystem, from marketers, to consumers, to charities, NGO’s, law enforcement agencies, even politicians, and in fact anyone who has brand names to protect.

The ICANN program is not merely a bad policy choice, but a serious threat to the legitimate interests of both companies and consumers on the Internet. We believe both the decision and the process ICANN followed are fundamentally flawed, and here are the reasons.

First, the immediate costs imposed on business is likely to be in the multi billions of dollars. Some of that is estimated that for a typical company the cost of acquiring a single new gTLD and managing it could easily exceed \$2 million. Companies that are forced into an auction with another interested applicant will potentially face far higher costs. As many companies have hundreds or even thousands of brands to defend, it’s easy to see how these costs will spiral upward.

Even ICANN’s own economists recognize that an unlimited expansion of gTLDs could cause serious economic harm to marketers. For example, ICANN’s own Phase Two Report noted that brand owners may be compelled to file, “numerous defensive registrations

to protect trademarks or intellectual property rights from misuse.” These resources could be far more effectively used for job creation and productive capital investment.

Second, ICANN’s protections for consumers in the gTLDs program are woefully inadequate. Again, ICANN’s own economic experts know that one of the most serious and costly challenges to the unlimited expansion of gTLDs was the harm to consumers from increased cybersquatting and related malware, phishing, and the unknowing purchase of counterfeit goods. In 2009 a coalition of law enforcement agencies including the U.S. Department of Justice and the FBI issued a set of law enforcement due diligence recommendations for ICANN. These recommendations were intended to help prevent against cyber security threats. However, according to a communique from ICANN’s own governmental advisory committee dated October 27, 2011, not one of law enforcement’s 12 recommendations has been adopted. And yesterday FTC Chairman Jon Leibowitz, testifying before a House Judiciary subcommittee, stated that the unlimited gTLDs rollout could be a “disaster for business and consumers,” and could dramatically increase problems for law enforcement.

Third, we have serious concerns about the potential major conflicts of interest involving both the board and staff of ICANN. It is very troubling that many of the same individuals who approved the unlimited rollout of the gTLD program, including ICANN’s former chairman, now stand to benefit substantially from the expansion program.

These are not just our concerns. The full European Commission and ICANN’s own governmental advisory committee have expressed, “extreme concern about the inadequacy of the existing rules of ethics and conflicts of interest.”

We believe that the Affirmation of Commitments that ICANN agreed to in order to obtain the freedom to manage major functions of the Internet from the Department of Commerce are real commitments. They must not be allowed to become merely meaningless high-sounding platitudes. This means that all Internet participants, and in particular the Department of Commerce, must take whatever steps are necessary to assure that the Top-Level Domain policy is fully justified on a cost-benefit basis and provides strong and adequate protections for businesses, NGO’s, and consumers, thereby furthering the public interest. That is simply not the case today.

We hope that this hearing places a spotlight on these issues and will help to begin the process of careful reevaluation of this misguided ICANN Top-Level Domain initiative.

Thank you very much for your attention.

[The prepared statement of Mr. Jaffe follows:]

PREPARED STATEMENT OF DANIEL L. JAFFE, EXECUTIVE VICE PRESIDENT,  
GOVERNMENT RELATIONS, ASSOCIATION OF NATIONAL ADVERTISERS (ANA)

The Association of National Advertisers (ANA) appreciates the opportunity to present our serious concerns about the new generic Top-Level Domain Name (gTLD) Program that was approved last June by the Internet Corporation for Assigned Names and Numbers (ICANN).

ANA is the advertising industry’s oldest trade association, founded in 1910. Our membership includes 400 companies with 10,000 brands that collectively spend over

\$250 billion in marketing communications and advertising. More information about our association is available at <http://www.ana.net>.

I am also appearing on behalf of CRIDO, the Coalition for Responsible Internet Domain Oversight. CRIDO represents 152 major national and international companies and trade associations that have joined together to oppose the roll-out of ICANN's new gTLD Program. A list of all of the members of CRIDO, which represent virtually every sector of the American economy and many important international companies, associations and federations, is attached to this statement.<sup>1</sup> CRIDO members represent some 90 percent of global marketing communications spending, equivalent to \$700 billion annually. While CRIDO members may follow different approaches to domain name activity, they are all united in the belief that the proposed unfettered expansion of generic Top Level Domains is both dangerous and misguided. This proposed ICANN initiative is not merely a bad policy choice but a serious threat to the legitimate interests of business and consumers on the Internet.

On November 10, 2011, ANA and the other members of CRIDO sent a Petition to Commerce Secretary John Bryson outlining our serious concerns about the new gTLD Program approved last June by ICANN despite significant objections from many global Internet stakeholder groups. The CRIDO Petition called on the Department of Commerce, and specifically the National Telecommunications and Information Administration (NTIA), "to use its best efforts to persuade ICANN to stop or postpone the opening of the gTLD application window," which is currently scheduled to begin on January 12, 2012.<sup>2</sup>

Other important groups have also independently spoken out against ICANN's gTLD Program, including the National Retail Federation (NRF), the Screen Actors Guild (SAG) and the American Federation of Television and Radio Actors (AFTRA). Their letters to the Secretary are available at <http://www.ana.net/getfile/16997> (NRF), <http://www.ana.net/getfile/16998> (SAG) and <http://www.ana.net/getfile/17000> (AFTRA).

We commend the Committee for holding this hearing on this critical issue which could impact the shape of the Internet for decades, and perhaps in perpetuity. In the past twenty years, the Internet has grown from being used by a limited number of engineering and academic elite to being relied on every day by over 2 billion people worldwide. According to a May 2011 report from the McKinsey Global Institute, nearly \$8 trillion are exchanged annually through e-commerce. The former Secretary of Commerce, Gary Locke, emphasized that "[t]he Internet is becoming the central nervous system of our information economy and society."<sup>3</sup> Since the Internet serves as a recognized catalyst for global economic growth, there is far too much at stake, particularly in today's economic climate, not to ensure that ICANN's policies are fair and impartial. This is in keeping with the promises that ICANN made in the Affirmation of Commitments between ICANN and the NTIA, in exchange for the considerable power to oversee the Internet that was delegated to ICANN by the U.S. government.

We believe the new gTLD Program is bad for marketers, consumers and the entire online marketplace. Consistent with the Affirmation of Commitments, ICANN has a responsibility to ensure that its actions further the public interest, promote consumer trust and the burgeoning Internet domain.<sup>4</sup>

We strongly believe that ICANN's new gTLD Program fails all of these standards. This Program in aggregate has multi-billion dollar implications for all marketers, both in the commercial and the nonprofit sectors, and their brands. It would cause irreparable harm and damage to the entire online business community. It would throw the domain name universe into substantial confusion for both marketers and consumers.

<sup>1</sup> See Exhibit A.

<sup>2</sup> The Petition is attached as Exhibit B.

<sup>3</sup> Commercial Data Privacy and Innovation in the Internet Economy: a Dynamic Policy Framework, Department of Commerce (2010), Message from Secretary of Commerce Gary Locke at 1, available at: <http://www.commerce.gov/sites/default/files/documents/2010/december/iptf-privacy-green-paper.pdf>.

<sup>4</sup> See <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>. (In relevant part,

- Section 3(a) requires ICANN to "ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent";
- Section 3(c) requires ICANN to "promote . . . consumer trust . . . in the DNS marketplace" and Section 8(c) commits ICANN to operating "as a multi-stakeholder, private sector led organization with
- input from the public, for whose benefit ICANN shall in all events act."

ICANN has been considering this Program for several years. ANA objected to these proposals as did many other industry groups and companies. Even important governmental entities, including international law enforcement organizations,<sup>5</sup> expressed deep misgivings about ICANN’s proposed gTLD Program. Unfortunately these strong objections have largely fallen on deaf ears.

ICANN consistently states that it is a multi-sectoral, bottom-up policy development organization. However, the creation of a massive bureaucratic labyrinth and process does not mean that ICANN is, in fact, representing the views of the majority of the Internet community. There clearly is not “consensus” support for the ICANN gTLD proposals. We cannot let the repetitive mantra that ICANN is a “multi-sectoral organization” camouflage or mask ICANN’s lack of responsiveness to the real concerns of a very broad cross-section of the business community, and a growing group of non-governmental organizations, consumer groups and other Internet users.

### Key Reasons Why the ICANN Program Must Be Stopped or Delayed

For a variety of reasons, we believe it is critical that the roll-out of the new gTLD Program be delayed.

*Flawed Justification:* ICANN justifies the Program on grounds that it: “might” or “may” (1) spur competition, (2) relieve scarcity in domain name space and (3) support differentiated services and new products. Yet evidence is sorely lacking that the introduction of new TLDs will actually achieve any of these goals. The very reports relied upon by ICANN to buttress its gTLD proposal prove that such justifications are unsupportable.

*Competition.* Regarding competition, in the December 2010 report commissioned by ICANN, entitled “Economic Considerations in the Expansion of Generic Top-Level Domain Names, Phase II Report: Case Studies” (“Phase II Report”),<sup>6</sup> the authors of the Phase II Report clearly conclude that the introduction of new undifferentiated gTLDs is not likely to have a “significant competitive impact” in the market for registry services (Phase II Report, ¶ 12).

*Scarcity.* It is equally clear that scarcity is not a current problem. As the Phase II Report concludes, “. . . [T]he relief of name scarcity is unlikely to be the principal source of social benefits derived from new gTLDs” (Phase II Report, ¶ 20).

*Differentiated Services and New Products.* The Phase II Report notes new domain uses that are possible with TLDs, comparing such prospects to existing TLDs, *e.g.*, domains that are restricted to particular functions or applications (such as existing TLD .mobi), domains that restrict second level registration to a particular class of owners (such as existing TLDs .museum, and .aero), and domains that restrict second-level registration to presenting a certain type of content (such as current domains relating to a specific geographic area). However, in each case, the experts conclude that the benefits were little more than speculative and that many of the TLDs adopted by ICANN in the last expansion round have been practical failures (Phase II Report, ¶¶ 39, 50, 58, 59, 62).

There is no demonstrable need to increase generic Top Level Domain names on an unlimited basis, and no likely benefit that would result from such an unrestricted increase.

A wide array of 22 suffixes such as “.biz,” “.info,” “.jobs,” “.travel” and “.museum” currently exist, not including the country codes. Most of those gTLD names are

<sup>5</sup>In 2009, a coalition of law enforcement agencies including the Australian Federal Police; the U.S. Department of Justice; the U.S. Federal Bureau of Investigation; the New Zealand Police; the Royal Canadian Mounted Police and the United Kingdom’s Serious Organized Crime Agency issued “Law Enforcement Due Diligence Recommendations for ICANN.” It is our understanding from the GAC Communiqué at Dakar, dated October 27, 2011, that *none* of law enforcement’s recommendations has been adopted; in fact of the 12 recommendations registrars were only able to report on their consideration of *three of the twelve law enforcement recommendations*. GAC Communiqué—Dakar attached hereto as Exhibit C.

<sup>6</sup>Michael L. Katz *et al.*, *Economic Considerations in the Expansion of Generic Top-Level Domain Names Phase II Report: Case Studies* (2010) <http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf>. See also, Michael L. Katz *et al.*, *An Economic Framework for the Analysis of Expansion of Generic Top-Level Domain Names* (2010), <http://www.icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf>; Michael L. Katz *et al.*, Reply to Comments on An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names (2010 [sic]) <http://www.icann.org/en/topics/new-gtlds/analysis-response-economic-framework-21feb11-en.pdf>; Michael L. Katz *et al.*, Reply to Comments on Economic Considerations in the Expansion of Generic Top-Level Domain Names Phase II Report: Case Studies (2011) <http://www.icann.org/en/topics/new-gtlds/analysis-response-phase-ii-report-21feb11-en.pdf>.

minimally used, but nonetheless actively policed by brand owners concerned about trademark dilution, cybersquatting and the online sale of pirated or counterfeited products.<sup>7</sup> The gains assumed by ICANN are completely unsubstantiated. In contrast, the new Program will throw the domain name universe into widespread confusion, impose major costs on marketers and cause harm to consumers. If there is no scarcity of space within the existing domain name system, the ICANN Program appears to be a solution in search of a problem. Even more seriously, the “solution” proposed by ICANN is likely to impose enormous costs on the Internet and divert productive resources at a time where these dollars could be far more effectively used for job creation and productive capital investment.

#### **Serious Economic Impact if the Program is Adopted**

These are not just our views. The studies ICANN initiated itself recognize that the Program may cause several severe economic harms. As set forth in Paragraph 63 of the Phase II Report, the costs of the Program may include the following:

*Misappropriation of Intellectual Property.* The experts cite a key concern of misappropriation of intellectual property rights, including the “costs of domain watching, defensive registrations, litigation or other measures to end misappropriation, and costs due to misappropriation that is not blocked (*e.g.*, lost profits due to sales of counterfeit goods or brand dilution).”<sup>8</sup>

*Defensive Registrations.* As noted, brand owners may be compelled to file defensive registrations, *i.e.*, “registrations undertaken to protect legitimate trademark or intellectual property rights from misuse, not registrations undertaken as the ‘defense’ of one’s business against increased competition on the merits.”<sup>9</sup> This cost alone could be in the hundreds of thousands of dollars *per brand name*, creating a multi-million dollar liability for major corporations and a multi-billion dollar cost to the industry.

Several Internet Domain name sellers have estimated the range of costs for gTLD applications alone. For example, in an article entitled, “Sweeping Away Confusion Regarding gTLDs,” Gretchen Olive stated that, “Those applying will need a *minimum* of \$800,000 to \$1 million to not only submit the application, but also to defend it against objections lodged by third parties and to get through the contract process with ICANN and set up the registry technical infrastructure (emphasis added).”<sup>10</sup> The article further noted that, “Monitoring for infringement and submission of objections will likely run most organizations between \$25,000 and \$50,000 in 2012.”<sup>11</sup>

*Domain Navigation Dilution because Consumers have More Places to Look.* The experts note that the “introduction of additional gTLDs may increase the costs of Internet navigation by increasing the number of potential domains over which a user may search. To the extent that such effects arise, they can dilute the value of existing domain names as navigation devices. The costs associated with such dilution include the costs of defensive registrations. . . and the costs due to dilution that cannot be mitigated.”<sup>12</sup>

*Harm to Internet Users from Increased Cybersquatting.* One of the most incipient and costly challenges to the adoption of any new gTLD is the prospect of cybersquatting and the substantial costs associated with preventing and policing it, which are already well into the billions of dollars. With respect to cybersquatting, the experts note, “In addition to harm in the form of increased search costs consumers may suffer more direct harm from increased cybersquatting. This direct harm may result from malware, phishing, and the unknowing purchase of counterfeit goods.”<sup>13</sup> While the experts opine that such a result “may” occur, history proves that cybersquatting will occur, just as it has with every TLD that has ever been administered by ICANN.

<sup>7</sup>For further background on the online piracy and counterfeiting arguments, see Mark Monitor, Traffic Report: Online Piracy and Counterfeiting (January 2011) (The study used only 22 brands and found that for those brands online distribution of pirated digital content and e-commerce sales of counterfeit goods were rampant).

<sup>8</sup>Michael L. Katz *et al.*, *Economic Considerations in the Expansion of Generic Top-Level Domain Names Phase II Report: Case Studies* (2010) at ¶63, <http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf>.

<sup>9</sup>*Id.*

<sup>10</sup>Gretchen Olive, *Sweeping Away Confusion Regarding gTLDs*, ADOTAS (Nov. 8, 2011) available at: <http://www.adotas.com/2011/11/sweeping-away-confusion-regarding-gtlds/>.

<sup>11</sup>*Id.*

<sup>12</sup>*Id.* at note 6, *supra* (Phase II Report).

<sup>13</sup>*Id.*

*Reduced Investment by Intellectual Property Owners.* The protection and development of intellectual property is a core value for the global economy, particularly given the world's reliance on technology. As ICANN's own experts conclude, the Program seriously undermines intellectual property rights—"There may also be indirect harms from the loss of intellectual property owners' incentives to invest in that intellectual property due to concerns that some of the benefits of that investment would be misappropriated."<sup>14</sup>

*Losses from Failed TLDs.* History itself discredits ICANN's position that the introduction of new TLDs will increase innovation and competition. One need only look at the dismal financial registration and track record of TLDs like .museum and .aero to prove the point. Such failures are very disruptive and costly to companies that have registered. This reality is borne out by the authors of the Phase II Report, who conclude that "[i]f a new gTLD failed and ceased operation, external costs might be imposed on the Internet community. Registrants in a failed gTLD might be stranded, unable easily to move their websites (on which they may have based their business) to other TLDs due to embedded links. More generally, Internet users might face increased clutter on the Internet if links fail to resolve."<sup>15</sup> Clearly, these types of dangers are likely to be substantially magnified by allowing an unrestricted proliferation and explosive growth of domains.

ICANN has in effect dismissed these concerns in reliance on what its own experts have noted as "speculative" competitive benefits of the Program. However, is it really credible that the broad group represented by the CRIDO membership—that includes some of the largest national and international advertisers, brand holders and associations in the world, with representation cutting across a vast range of industry sectors—can all be unable to foresee what are their true competitive interests?

#### **ICANN's Deliberation Process is Flawed**

Nevertheless, ICANN is now moving forward with the Program. ICANN justifies ignoring these studies in its report entitled, "Rationale for Board Decision on Economic Studies Associated with the New gTLD Program."<sup>16</sup> With all due respect, the "Rationale" is nothing short of a nullification of ICANN's own mandate to conduct economic studies. Rather than calling for further expert analysis, ICANN dismisses the very economic evidence derived from the studies and opts for a default justification of "competition" in which any TLDs may be adopted. Furthermore, ICANN minimizes the Phase II Report's conclusion that registry competition will not be significantly affected by the Program; ICANN says its real interest is competition in business generally, and claims that any additional economic study on that subject would be futile.<sup>17</sup> We understand that ICANN contemplates further studies once the new gTLD Program is underway,<sup>18</sup> but at that point, the damage will have been done. Once new gTLDs are deployed, there is no turning back.

If this Program, in fact, were likely to enhance competition and the Internet marketplace, one would expect broad statements of support for it. This support would come from many Internet and governmental sources. Instead, the voices that are speaking in favor of the Program appear to come almost exclusively from registrars, registries and others who will directly profit from facilitating the gTLD roll out—not those whom ICANN says will benefit. The broader Internet business community is clearly rejecting the proposal.

This scant and conflicting economic analysis is one of many examples in which ICANN has disregarded its own requirements and unilaterally issued an edict.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Available at [www.icann.org/en/minutes/rationale-economic-studies-21mar11-en.pdf](http://www.icann.org/en/minutes/rationale-economic-studies-21mar11-en.pdf). See also ICANN Board Rationales for the Approval of the Launch of the New gTLD Program, available at [www.icann.org/en/minutes/rationale-board-approval-new-gtld-program-launch-20jun11-en.pdf](http://www.icann.org/en/minutes/rationale-board-approval-new-gtld-program-launch-20jun11-en.pdf); Even in its final rationales, ICANN acknowledges that no determination could be made that the benefits of the new gTLD program will outweigh the costs.

<sup>17</sup> See ICANN, Minutes of Board Meeting 25 January 2011, Economic Studies—<http://www.icann.org/en/minutes/minutes-25jan11-en.htm> ("[T]he Board has determined that no further commissioned economic studies could better inform the Board's decision." *Id.* at 8). See also ICANN, Rationale for Resolution 2011.01.25.22 (2011) at 1, <http://www.icann.org/en/minutes/rationale-economic-studies-21mar11-en.pdf>; see also Anthony Van Couvering, ICANN's Economic Study—It Depends, Minds + Machines Blog (Jul 21, 2010)(Commenting on the June 2010 Katz economic study Mr. Van Couvering said, "Should observers of ICANN lend any credence to this study? If your goal is to advocate a position without any empirical evidence, it is an excellent tool. If your goal is to understand what the new gTLD program will produce, it will, if printed out and bound, make a splendid paperweight").

<sup>18</sup> <http://www.icann.org/en/minutes/minutes-25jan11-en.htm>.

ICANN's own Code of Conduct<sup>19</sup> mandates that ICANN will "[w]ork to build consensus with other stakeholders in order to find solutions to the issues that fall within the areas of ICANN's responsibility. The ICANN model is based on a bottom-up, consensus driven approach to policy development." Its undertakings with the U.S. Department of Commerce additionally require that ICANN act rationally and transparently.<sup>20</sup> Clearly, the legal and due diligence requirements of ICANN's own mandates have not been met here. An effort to foist on the world community and markets a change of this magnitude is not the measured "bottom up" approach described in the Code of Conduct. Moreover, it is impossible to describe the decision to adopt the Program as a decision based upon consensus where the research, comments and reports submitted to ICANN clearly show that there was and still is no consensus on the purported benefits of the Program.

### **Excessive Costs and Harms to Brands**

The immediate cost imposed on businesses is likely to be in the billions of dollars. Applying for a new Top Level Domain name will require an extraordinarily expensive registration fee of \$185,000 as well as a minimum cost of \$25,000 paid annually to ICANN over the ten-year contractual commitment that successful applicants must make. Costs will further escalate at the second level of naming—the word to the left of the "dot"—as brand owners will have to consider registering each of their brand-related terms, for either commercial or defensive purposes.

Some have estimated that, for a typical company, the cost of acquiring a single gTLD and managing it over the initial commitment of ten years could easily exceed \$2 million, including expenses for the application process, operations, disputes, and related legal services. The costs associated with trademark monitoring and protection in all the new gTLD spaces will run even higher. Some CRIDO members spend over \$1 million a year today to enforce against cybersquatting and fraud in the existing 22 gTLD spaces. These numbers will clearly escalate if ICANN's proposal goes forward. In addition, many companies may face an auction for a generic Topic Level Domain, which will result in higher costs to ICANN's benefit. Many companies have hundreds or even thousands of brands to defend. Brand owners will face a Hobson's choice of either being compelled to spend substantial resources to acquire and manage new gTLDs or risk the harm to their brands that could occur if they take no action. This has certainly been the message spoken loud and clear to us from our members and the many groups within CRIDO.

### **Following the Money**

Existing and prospective Internet registries and registrars stand to be the primary beneficiaries of the new gTLD Program. Just examining ICANN's own financial statements, it would appear that registries and registrars pay fees that comprise the lion's share of ICANN's budget. According to ICANN's own audit reports for the Fiscal Year 2011, ICANN's primary source of revenue comes from Internet registries and registrars. In fact, of ICANN's \$69.3 million in revenue for Fiscal Year 2011, \$64.5 million came from fees paid by registries and registrars.<sup>21</sup> That is 93 percent of ICANN's 2011 revenue. In 2010, that same figure was 94 percent.<sup>22</sup> Looking ahead to this new gTLD program, more TLDs mean new business for registries and registrars and greater numbers of registries and registrars, which in turn creates more fees for ICANN.

However, ICANN's budget incentive for new gTLDs will be more than increased registry and registrar fees. The initial application fees expected in FY 2012 and 2013 will provide the organization with a considerable boost to its budget—a \$92.5 million dollar boost in fact (which could be quite conservative because it only

<sup>19</sup> <http://www.icann.org/en/documents/code-of-conduct-10jan08-en.pdf>.

<sup>20</sup> ICANN's Code of Conduct at <http://www.icann.org/en/documents/code-of-conduct-10jan08-en.pdf>; see also, Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation for Assigned Names and Numbers (September 30, 2009) at <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm> ("ICANN commits to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decisionmaking will reflect the public interest and be accountable to all stakeholders by: . . . (c) continually assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof); (d) continually assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and (e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development").

<sup>21</sup> See Report of Independent Auditors and Financial Statements for the Internet Corporation for Assigned Names and Numbers, prepared by Moss-Adams LLP June 30, 2011 and 2010, available at: <http://www.icann.org/en/financials/financial-report-fye-30jun11-en.pdf>.

<sup>22</sup> *Id.* at 2.

projects 500 applications; in some of ICANN's earlier delegation scenarios they have projected 1,000 or more applications as the high end).<sup>23</sup> In the Fiscal Year 2012 budget projections for new gTLD revenues are expected to add another \$27.8 million to ICANN's revenue—or adding another 40 percent to its budget.<sup>24</sup> Likewise, in draft Fiscal Year 2013 new gTLD revenues are expected to add another \$64.8 million—that is nearly a 94 percent increase in revenues above the 2011 Fiscal Year figures mentioned above.<sup>25</sup>

ICANN says that it will use these revenues for intensive application review processes, but we would be remiss if we did not add that \$30 million or nearly one-third of all expected gTLD application revenues will be earmarked for a litigation risk fund. ICANN is clearly expecting many problems with this application window given the large litigation budget anticipated.<sup>26</sup>

#### **Lack of Consensus**

It is true that ICANN spent a number of years considering this Program at meetings around the world. However, the 152 members of CRIDO, representing major global companies and business groups, are living proof that the objections of industry sectors most affected by this Program have not been adequately considered or addressed by ICANN. A number of CRIDO members have actively voiced objections to the new gTLD process and the lack of adequate trademark protection mechanisms, yet their concerns have fallen on deaf ears. This entire constituency—the one required to fund the new names and maintain the Internet's economic model—has been largely ignored. On the other hand, we do not hear any clamor for the Program. ICANN has failed to reach stakeholder consensus, a specific requirement of its contract with the NTIA.

#### **Conflict of Interest Concerns**

We are very concerned about potential conflicts of interest that may be present in this expansion proposal, for both the Board and staff of ICANN. It is very troubling that many of the same individuals who approved this expansion, including ICANN's former Chairman, now stand to benefit substantially from companies that will register applicants and manage the expansion. For example, within one month after the vote of the ICANN Board to approve the new gTLD expansion, former ICANN Chairman Peter Dengate Thrush had joined a London company called Top Level Domain Holdings, a company that will directly profit from the decision.

These events have cast a serious cloud over the legitimacy of the vote to approve the new gTLD Program. ICANN serves as a quasi-governing body for the day-to-day operations of the Internet. It is absolutely critical that all decisions are made in the public interest, not in the best interest of the closely-knit ICANN family.

We believe that ICANN can reclaim its legitimacy as an Internet governance body only by conducting a thorough and proactive review of both the gTLD expansion and the broader conflict of interest and ethics policies for the organization. We expressed these concerns in a letter to ICANN on October 2, 2011, which is available at <http://www.ana.net/getfile/16766>. Our letter notes that serious concerns about the inadequacy of the ICANN conflict of interest policies have been expressed by Senator Ron Wyden (D-OR), by Lawrence Strickling, Assistant Secretary for Communications and Information at the U.S. Department of Commerce, and by the full European Commission.

At its October meeting in Dakar, ICANN's Governmental Advisory Committee (GAC) expressed "extreme concern about the inadequacy of the existing rules of ethics and conflict of interest" in ICANN.<sup>27</sup> The conflict of interest issues threaten to undermine confidence in ICANN's decision-making. Obviously, if ICANN merely adopts prospective conflict of interest corrections they will not undo harms that have already occurred. Attention must be paid to the effects of conflicts on ICANN's deliberations and the legitimacy of the gTLD roll out proposal.

<sup>23</sup>New gTLD Program Cash Flow and P&L by Fiscal Year, ICANN.org, (September 9, 2011) (showing the gTLD financial projections) available at: <http://www.icann.org/en/financials/new-gtld-program-cash-flow-09sep11-en.pdf> ("gTLD Cash Flows Projections"); Delegation Rate Scenarios for New gTLDs, ICANN.org, (Oct. 2010) at p 6 (showing 1000 applications as extremely high activity and 1000s of applications as the maximum throughput) available at: <http://www.icann.org/en/topics/new-gtlds/delegation-rate-scenarios-new-gtlds-06oct10-en.pdf>.

<sup>24</sup>*gTLD Cash Flow Projections* at 2.

<sup>25</sup>*Id.*

<sup>26</sup>*Id.*

<sup>27</sup>GAC Communiqué—Dakar, October 27, 2011 (attached as Exhibit D).

### Exemptions to the Program

Three groups were exempted or exempted themselves from the new gTLD Program: the Red Cross, the Olympics and ICANN itself. In letters to ICANN, both the Red Cross and the Olympics stated that they needed this type of protection to assure that the public who trust their brand identities would not fall victim to typosquatting, cybersquatting and phishing. The Red Cross noted that a substantial portion of their resources are used to counteract “fraudulent websites containing Red Cross names to solicit donations routinely after virtually every newsworthy disaster.”<sup>28</sup>

While these exemptions may be appropriate, no other exemptions were extended to the thousands of other charities and foundations that similarly use the Internet to foster their public interest activities—yet they surely face the same kinds of harms.

The fact that ICANN exempted itself is even more informative. ICANN not only exempted its own name from the gTLD process, but several other names as well. But the protections for ICANN will not end at the top level. ICANN will have the opportunity to negotiate more protections for itself at the second level once new gTLD registries are selected. Take for example, the many reservations that ICANN made for itself on the new .xxx domain. In the .xxx registry, ICANN was even able to protect names of some of its leadership.<sup>29</sup> No other groups received the same protection. Major universities across the country, for example, have recently found it necessary to purchase multiple .xxx domain names to protect against links of their names to porn sites. The Ohio State University purchased a total of 19 domains, including buckeyebnitz.xxx and goldpants.xxx.<sup>30</sup> The cost for each of these domain name purchases was \$200 for a purely defensive purpose. These costs could be substantially higher if an auction is required to protect a name.

These exemptions explode the argument that ICANN makes that it has developed adequate protections against cybersquatting, typosquatting and phishing. These charitable and other NGO groups will face the same dangers that the Red Cross and the Olympics highlighted, and many of them will not have the financial wherewithal to defend and protect their good name in the Internet marketplace.

### Not All TLDs Are Alike

Our concerns primarily focus on generic Top Level Domains (gTLDs). These concerns do not generally extend to so-called ccTLDs dealing with country designators such as .co, .cn, .eu, and .de. Nor are we opposed to the use of other languages and character sets in the Domain system, although we believe that the public interest requires that all Top Level Domains be cost beneficial and not impose undue burdens on the Internet or undermine consumer trust. Neither do we believe that there is something sacrosanct about maintaining the existing 22 gTLD system unaltered. However, all of our companies, associations and groups believe the unrestricted and unlimited expansion of gTLDs is a reckless experiment that needs to be halted and reassessed before it damages the very positive growth of consumer trust that is fundamental to the Internet marketplace.

### Conclusion

We commend the Committee for holding this important hearing. Examining the membership list of CRIDO demonstrates that the concerns of the worldwide business community are extraordinarily widespread. The issues that we raise will fall even harder on consumer groups, charities, foundations, and myriad other entities that have even less financial ability to protect their institutional interests and that will be impacted by the rapid, unlimited opening of the generic Top Level Domain space.

We reject the argument of those who say that it is too late for ICANN to step back and reevaluate or for NTIA, the Governmental Advisory Committee and other key Internet participants to try to make one last major effort to forestall this potentially severely damaging initiative. There is absolutely nothing sacred about the January 2012 implementation date. Given the serious concerns expressed by a

<sup>28</sup> David Meltzer, Senior Vice President International Services, Peggy Dyer, Chief Marketing Officer and Mary S. Elcano, General Counsel and Corporate Secretary, American Red Cross, to Kurt Pritz, Senior Vice President, Stakeholder Relations and Amy Stathos, Deputy General Counsel, ICANN, June 16, 2011, page 2.

<sup>29</sup> Kevin Murphy, RodBeckstrom.xxx Will Never See the Light of Day, Domain Incite (Sept. 14, 2011) available at: <http://domainincite.com/rodbeckstrom-xxx-will-never-see-the-light-of-day/>

<sup>30</sup> FoxNews.com, Penn State Bought Adult .XXX Domain Names to Block Usage Prior to Sex Abuse Scandal (Nov. 30, 2011) available at <http://www.foxnews.com/us/2011/11/30/penn-state-buys-adult-domain-names-to-block-usage/>.

broad and growing cross-section of the entire American and global business community, the companies which provide the economic foundation of the Internet, and the potential dangers to consumers, we believe it would be irresponsible for ICANN to proceed full-speed ahead with the roll-out next month.

We are sensitive to the U.S. government's concern that by acting, in any capacity, it could fracture the voluntary domain name system, which is embedded in the authoritative root. Or, alternatively, that control of the ICANN Internet governance function could be relinquished to the International Telecommunications Union. However, given the potential harms that we have identified from this Program: consumer harm, cybersquatting, typosquatting, Internet piracy and product counterfeiting, inaction could be far more destabilizing to ICANN as a governance body. If the new gTLDs launch and such problems occur en masse, then foreign governments will have no choice other than to call for the dismantling of ICANN. No one here at this hearing wants to see ICANN dismantled. We would like to buttress its authority by ensuring that the gTLD Program is maintained and developed appropriately in the public interest and promotes consumer trust.

We very much appreciate this opportunity to testify and the careful consideration of our and the other members of CRIDO's views.

#### EXHIBIT A

##### Association Signatories to the ICANN Petition

AAF–Amarillo  
 AAF–Dallas  
 AAF–Fort Worth  
 AAF Hampton Roads  
 AdClub Cincinnati  
 Advertisers Association of Guatemala (Guatemala)  
 Advertisers Association of Nigeria (Nigeria)  
 Advertisers Association of Turkey (Turkey)  
 Advertisers Business Group (United Arab Emirates)  
 Agrupacion Nacional de Anunciantes de Mexico (Mexico)  
 American Advertising Federation (AAF)  
 American Advertising Federation Baltimore, Inc.  
 American Advertising Federation of Des Moines  
 American Apparel & Footwear Association (AAFA)  
 American Association of Advertising Agencies (4As)  
 American Beverage Association (ABA)  
 American Council of Life Insurers (ACLI)  
 American Health Care Association (AHCA)  
 American Insurance Association (AIA)  
 American Intellectual Property Law Association (AIPLA)  
 American Society of Association Executives (ASAE)  
 Asociacion Espanola de Anunciantes (Spain)  
 Asociacion Nacional de Anunciantes de Colombia (Colombia)  
 Asociacion Nacional de Anunciantes Peru (Peru)  
 Asociacion Nacional de Anunciantes Venezuela (Venezuela)  
 Asociacion Nacional de Avisadores Chile (Chile)  
 Associacao Brasileira de Anunciantes (Brazil)  
 Associacao Portuguesa de Anunciantes (Portugal)  
 Association of Advertisers in Ireland (Ireland)  
 Association of Canadian Advertisers (Canada)  
 Association of National Advertisers (ANA)  
 Association of New Zealand Advertisers (New Zealand)  
 Association of Swiss Advertisers (Switzerland)  
 Austin Advertising Federation  
 Australian Association of National Advertisers (Australia)  
 Boise Advertising Federation  
 Bond van Adverteerders (The Netherlands)  
 Bulgarian Association of Advertisers (Bulgaria)  
 Cable Advertising Bureau (CAB)  
 Camara Argentina de Anunciantes (Argentina)  
 Camara de Anunciantes del Paraguay (Paraguay)  
 Camara de Anunciantes de Uruguay (Uruguay)  
 China Association of National Advertisers (China)  
 Consumer Electronics Association (CEA)  
 Czech Association for Branded Products (Czech Republic)

Cyprus Advertisers Association (Cyprus)  
 Dansk Annoncoerforening (Denmark)  
 Direct Marketing Association (DMA)  
 European Association of Communications Agencies (EACA)  
 European Publishers Council (EPC)  
 Food Marketing Institute (FMI)  
 Grocery Manufacturers Association (GMA)  
 Groupement des Annonceurs du Maroc (Morocco)  
 Hellenic Advertisers Association (Greece)  
 Hungarian Branded Goods Association (Hungary)  
 Idaho Advertising Federation  
 Idaho Falls Advertising Federation  
 Incorporated Society of British Advertisers (United Kingdom)  
 Indian Society of Advertisers (India)  
 Indonesia Advertisers Association (Indonesia)  
 Intellectual Property Owners Association (IPO)  
 Interactive Advertising Bureau (IAB)  
 IAB Europe  
 The Israel Marketing Association (Israel)  
 Japan Advertisers Association (Japan)  
 Lebanese Association of Advertisers (Lebanon)  
 Lewis-Clark Valley Advertising Federation  
 Magic Valley Advertising Federation  
 Mainostajien Liitto (Finland)  
 Malaysian Advertisers Association (Malaysia)  
 The Marketing Association of South Africa (South Africa)  
 Mobile Marketing Association (MMA)  
 MPA—the Association of Magazine Media  
 National Association of Broadcasters (NAB)  
 National Association of Manufacturers (NAM)  
 National Confectioners Association  
 National Council of Chain Restaurants (NCCR)  
 National Restaurant Association (NRA)  
 Norwegian Association of Advertisers (Norway)  
 Organisation Werbungtreibende im Markenverband (Germany)  
 Pakistan Advertisers Society (Pakistan)  
 Philippine Association of National Advertisers (The Philippines)  
 Pocatello Advertising Federation  
 Promotion Marketing Association (PMA)  
 Property Casualty Insurers Association of America  
 Radio Advertising Bureau (RAB)  
 Retail Industry Leaders Association (RILA)  
 Russian Association of Advertisers (Russia)  
 Singapore Advertisers Association (Singapore)  
 Slovak Association for Branded Products (Slovakia)  
 Slovenian Advertising Chamber (Slovenia)  
 Sveriges Annonserer (Sweden)  
 Television Bureau of Advertising (TVB)  
 Union Belge des Annonceurs (Belgium)  
 Union des Annonceurs (France)  
 U.S. Chamber of Commerce  
 Utenti Pubblicita Associati (Italy)  
 World Federation of Advertisers (WFA)

#### **Company Signatories to the ICANN Petition**

Acxiom  
 adidas  
 Adobe Systems Incorporated  
 Allstate Insurance Company  
 American Express  
 Autodesk, Inc.  
 Brinker International  
 Burger King Corporation  
 The Coca-Cola Company  
 Chrysler Group LLC  
 Church's Chicken  
 Combe Incorporated

ConAgra Foods  
 Costco Wholesale Corporation  
 Darden Restaurants, Inc.  
 Dell Inc.  
 Dunkin' Brands, Inc.  
 Educational Testing Service (ETS)  
 Fidelity Investments  
 Ford Motor Company  
 General Electric Company  
 GroupM  
 Hack Creative  
 Havas  
 Hewlett-Packard Company  
 Hunter Douglas NA  
 J.C. Penney Company, Inc.  
 Johnson & Johnson  
 Kellogg Company  
 Kraft Foods  
 La Quinta  
 Liberty Mutual  
 MillerCoors  
 Money Mailer of Amarillo  
 Nationwide Mutual Insurance Company  
 Neon Sun Tanning Salon  
 Nestle USA  
 ORCI  
 OSI Restaurant Partners, LLC  
 Papa John's  
 Procter & Gamble  
 Publicis Groupe  
 Pulte Group  
 Reebok  
 Rollins, Inc.  
 Samsung  
 Siemens AG  
 Siemens Corporation  
 The J.M. Smucker Company  
 Toyota  
 US Bank  
 Vanguard  
 Verge  
 Walmart

## EXHIBIT B

COALITION FOR RESPONSIBLE DOMAIN OVERSIGHT  
*November 10, 2011*

Hon. JOHN BRYSON,  
 Secretary,  
 U.S. Department of Commerce,  
 Washington, DC.

Dear Secretary Bryson:

We, the undersigned, representing large and small business, in virtually every industry sector, in the United States and around the world, are writing to express our strong concern with respect to the June 2011 decision by the Internet Corporation for Assigned Names and Numbers (ICANN) to approve the top-level domain (gTLD) Applicant Guidebook and to move forward with plans to open the new gTLD application window on January 12, 2012 (the ICANN plan, decision or ICANN Proposal) on a virtually unlimited basis.

ICANN's action was taken despite widespread and significant objections raised throughout the process by many in the global community of Internet users. ICANN's decision was not made in the public interest, does not promote consumer trust, and does not benefit the public, as required in the Affirmation of Commitments between ICANN and the National Telecommunications and Information Administration (NTIA).

Moreover, additional facts have come to light since ICANN announced the most recent iteration of the Applicant Guidebook—including rounds of troubling conflict of interest questions—which cast a shadow over the entire process leading up to ICANN's decision. Those facts, combined with the current state of the global econ-

omy, raise substantial issues regarding the wisdom of moving forward with ICANN's plan, given its undisputed costs and its merely putative benefits.

The ICANN Proposal would unduly burden a diverse range of public and private brand holders, as they would be forced to spend ever-greater amounts of time and resources simply to protect their brands. In addition, there is an unacceptably high risk that the ICANN plan would confuse consumers, increase the already unacceptable level of fraud and identity theft on the Internet, create new opportunities for Internet crime, and jeopardize cyber security. Businesses and not-for-profits alike have repeatedly raised these issues with ICANN over the last four years, with no acceptable resolution.

For these reasons, we respectfully call on the Department of Commerce and, specifically the NTIA, to persuade ICANN to postpone the opening of the top-level domain application window unless or until such time as ICANN convincingly demonstrates that unlimited TLD name expansion would:

- Promote consumer trust;
- Enhance Internet security;
- Promote widespread economic benefits across diverse economic sectors and stakeholders; and
- Demonstrate that these benefits will exceed the costs that such gTLD expansion would inevitably impose on the global Internet community.

Respectfully submitted,

#### **Organizations**

AdClub Cincinnati	Interactive Advertising Bureau (IAB)
American Advertising Federation (AAF)	IAB Europe
AAF–Amarillo	Lewis-Clark Valley Advertising Federation
AAF–Dallas	Magic Valley Advertising Federation
AAF–Fort Worth	Mobile Marketing Association (MMA)
AAF Hampton Roads	MPA—the Association of Magazine Media
American Advertising Federation Baltimore, Inc.	National Association of Broadcasters (NAB)
American Advertising Federation of Des Moines	National Association of Manufacturers (NAM)
American Apparel & Footwear Association (AAFA)	National Confectioners Association
American Association of Advertising Agencies (4As)	National Council of Chain Restaurants (NCCR)
American Beverage Association (ABA)	National Restaurant Association (NRA)
American Council of Life Insurers (ACLI)	Pocatello Advertising Federation
American Health Care Association (AHCA)	Promotion Marketing Association (PMA)
American Insurance Association (AIA)	Radio Advertising Bureau (RAB)
American Intellectual Property Law Association (AIPLA)	Retail Industry Leaders Association (RILA)
American Society of Association Executives (ASAE)	Television Bureau of Advertising (TVB)
Association of Canadian Advertisers (ACA)	U.S. Chamber of Commerce
Association of National Advertisers (ANA)	World Federation of Advertisers (WFA) Corporations
Austin Advertising Federation	Acxiom
Boise Advertising Federation	Adobe Systems Incorporated
Cable Advertising Bureau (CAB)	Allstate Insurance Company
Consumer Electronics Association (CEA)	American Express
Direct Marketing Association (DMA)	Brinker International
European Association of Communications Agencies (EACA)	Burger King Corporation
European Publishers Council (EPC)	The Coca-Cola Company
Food Marketing Institute (FMI)	Combe Incorporated
Grocery Manufacturers Association (GMA)	ConAgra Foods
Idaho Advertising Federation	Costco Wholesale Corporation
Idaho Falls Advertising Federation	Darden Restaurants, Inc.
Intellectual Property Owners Association (IPO)	Dell Inc.
	Dunkin' Brands, Inc.
	Educational Testing Service (ETS)
	Fidelity Investments
	Ford Motor Company
	General Electric Company
	Hack Creative

Hewlett-Packard Company	Nestle USA
Hunter Douglas NA	ORCI
J.C. Penney Company, Inc.	OSI Restaurant Partners, LLC
Johnson & Johnson	Papa John's
Kellogg Company	Procter & Gamble
La Quinta	Publicis Groupe
Liberty Mutual	Pulte Group
MillerCoors	Samsung
Money Mailer of Amarillo	US Bank
Nationwide Mutual Insurance Company	Vanguard
Neon Sun Tanning Salon	Verge

cc: Lawrence E. Strickling, Assistant Secretary for Communications and Information and Administrator, National Telecommunications and Information Administration, U.S. Department of Commerce

Fiona Alexander, Associate Administrator, National Telecommunications and Information Administration, U.S. Department of Commerce

Vernita Harris, Deputy Associate Administrator of the Office of International Affairs, National Telecommunications and Information Administration, U.S. Department of Commerce

Suzanne Murray Radell, Senior Policy Advisor, National Telecommunications and Information Administration, U.S. Department of Commerce

Elizabeth Bacon, Telecommunications Policy Specialist, National Telecommunications and Information Administration, U.S. Department of Commerce

Cameron F. Kerry, General Counsel, U.S. Department of Commerce

Daniel K. Inouye, Chairman, Committee on Appropriations, U.S. Senate

John D. Rockefeller IV, Chairman, Committee on Commerce, Science and Transportation, U.S. Senate

Patrick J. Leahy, Chairman, Committee on the Judiciary, U.S. Senate

Thad Cochran, Ranking Member, Committee on Appropriations, U.S. Senate

Kay Bailey Hutchison, Ranking Member, Committee on Commerce, Science and Transportation, U.S. Senate

Charles E. Grassley, Ranking Member, Committee on the Judiciary, U.S. Senate

Barbara Mikulski, Chair, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. Senate

Al Franken, Chairman, Subcommittee on Privacy, Technology and the Law, Committee on the Judiciary, U.S. Senate

Tom Coburn, Ranking Member, Subcommittee on Privacy, Technology and the Law, Committee on the Judiciary, U.S. Senate

Ron Wyden, Chairman, Subcommittee on International Trade, Customs, and Global Competitiveness, Committee on Finance, U.S. Senate

Harold Rogers, Chairman, Committee on Appropriations, U.S. House of Representatives

Fred Upton, Chairman, Committee on Energy and Commerce, U.S. House of Representatives

Lamar Smith, Chairman, Committee on the Judiciary, U.S. House of Representatives

Norm Dicks, Ranking Member, Committee on Appropriations, U.S. House of Representatives

Henry A. Waxman, Ranking Member, Committee on Energy and Commerce, U.S. House of Representatives

John Conyers, Ranking Member, Committee on the Judiciary, U.S. House of Representatives

Bob Goodlatte, Chairman, Subcommittee on Intellectual Property, Competition and the Internet, Committee on the Judiciary, U.S. House of Representatives

Frank Wolf, Chairman, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. House of Representatives

Mel Watt, Ranking Member, Subcommittee on Intellectual Property, Competition and the Internet, Committee on the Judiciary, U.S. House of Representatives

Chaka Fattah, Ranking Member, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. House of Representatives

## EXHIBIT C

GOVERNMENTAL ADVISORY COMMITTEE  
*Dakar, 27 October 2011*

**GAC Communiqué—Dakar****I. Introduction**

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Dakar, Senegal during the week of October 22–27, 2011. Forty-nine Governments participated in the meeting: 46 present and 3 by remote participation and six Observers. The GAC expresses warm thanks to the local hosts, The Ministry of Communication, Telecommunications and Information Technology (MICOMTELTIC) and the Regulatory Authority for Telecommunications and Post (ARTP) for their hospitality in organizing the meeting and ICANN for supporting the GAC during the meeting.

**II. New gTLDs**

The GAC further discussed and decided on the formulation of GAC advice for inclusion in Module 3 of the Applicant Guidebook [Annex I].

During the discussion ICANN Staff underlined their understanding that advice regarding the definition of Geographic Names should be adopted by the GAC.

The GAC congratulates the JAS working group on the final report and recommendations, which are consistent with GAC advice. The GAC looks forward to the Board providing clear timelines for implementation of the recommendations to enable needy applicants to join in full and meaningfully in the first round.

The GAC raised concern about the unpredictability of the actual number of applications that governments would have to digest to proceed after the end of the application period. The GAC made clear, that if the number of applications published by ICANN significantly exceeds 500, GAC members might not be able to process a very large number of applications in the very short early warning procedure and in the limited time for issuing GAC advice on all these strings.

Further, the GAC asked ICANN for clarification about its intention to process these applications in batches of 500, in the case that there are more than SOD applications. The GAC urges ICANN to clarify the procedures and implications for applicants being processed in different batches, as this might have implications for competition and applicants' business models.

Following presentations by the ICANN staff and the Security and Stability Advisory Committee, the GAC took note of the SSAC consideration of the combined impact of new gTLDs and other changes such as the introduction of IPv6, DNSSEC and IDNs to the root. The GAC welcomes the confirmation of the commitment by the ICANN Board to provide a full report with a complete analysis, including all underlying data, of the root system scalability well before the opening of the new gTLDs application round. The GAC further welcomes the confirmation of the commitment by the Board to evaluate the impact on the system after the 1st round, with the understanding that the launch of a second round is contingent on the outcome of this evaluation, in particular the absence of negative effects on the root system. The GAC believes that in order for this evaluation to be effective, an appropriate and trustable monitoring system needs to be in place.

In its discussions with the Board regarding the Communication Plan for new gTLDs, the GAC emphasised the importance of promoting the gTLDs application round in all countries, including developing countries. The GAC suggested that levels of awareness be continually assessed and reviewed, and priorities and target areas under the Plan be adjusted accordingly in the run up to the launch of the round.

The GAC welcomed the assurances received from the Board and staff that the evaluation of applications will ensure a level playing field for applicants and that any conflicts of interest will be identified and avoided accordingly.

**III. Law Enforcement (LEA) Recommendations**

In recent years, the Internet has grown to have over two billion users and be a significant contributor to the global economy.

Cyber-crime is a growing threat to the security and stability of the Internet, with broad and direct public policy impacts. Recent estimates suggest that the direct financial impact of cyber-crime is extremely significant.

Law enforcement agencies have identified a series of specific problems which are limiting their ability to address this growing problem.

As part of this, law enforcement agencies have identified specific areas of concern in the ICANN context, relating to contractual weaknesses and a lack of necessary due diligence.

To address these urgent problems, in 2009 law enforcement agencies made 12 concrete recommendations to reduce the risk of criminal abuse of the domain name system.

These recommendations were informally socialized with the registrar community, the GAC, and with ICANN compliance staff over the course of several months, before the GAC advised the Board in its Brussels communique that it formally endorsed the recommendations.

Direct exchanges between law enforcement agencies and registrars continued in September 2010 in Washington D.C., in February 2011 in Brussels, and during the March and June 2011 ICANN meetings.

As a complement to the June exchanges in Singapore, the GAC urged the Board to support actions necessary to implement those recommendations as a matter of urgency.

To date, none of the recommendations have been implemented, and the risks remain. The GAC therefore advises the ICANN Board to take the necessary steps to ensure that ICANN's multistakeholder process effectively addresses these GAC-endorsed proposals as a matter of extreme urgency.

#### **IV. Accountability and Transparency Review Team Recommendations (ATRT)**

The GAC welcomes the update provided by ICANN staff on the ATRT Recommendations progress and the suggestions presented with regards to the implementation of recommendations 9 through 14 on the GAC role, effectiveness and interaction with the Board.

The GAC looks forward to an expedited implementation of the Joint Working Group and ATRT recommendations and is keen to continue working with the Board on the Recommendations related to the GAC.

#### **V. Conflict of interest**

The GAC expresses extreme concern about the inadequacy of the existing rules of ethics and conflict of interest in the light of recent events and therefore welcomes the approval of the motion by the Board Governance Committee on 1S September 2011 concerning "ethics and conflicts of interest". The GAC looks forward to the publication of a timeline with clear and effective actions as a conclusion of the Dakar meeting or shortly thereafter. In order to ensure the legitimacy and sustainability of the multi stakeholder model as enshrined in ICANN, the GAC underlines the extreme urgency of putting in place effective and enforceable rules on conflicts of interest.

The GAC will keep this important issue under review and may come forward with further advice before the Costa Rica GAC meetings.

#### **VI. Meeting with the Generic Names Supporting Organisation (GNSO)**

The GAC and the GNSO exchanged views on a number of issues, beginning with an overview by ICANN staff of the GNSO policy development process. Consistent with the recommendations of the Accountability and Transparency Review Team and the related GAC-Board Joint Working Group, the GAC stressed its interest in ensuring that GAC views are provided and taken into account at early stages in the policy development process.

The meeting also discussed the implementation of the Law Enforcement Agency (LEA) recommendations to mitigate Domain Name System abuse, which were endorsed by the GAC in June 2010. The GAC expressed its disappointment that registrars were only able to report on their consideration of three of the twelve LEA Recommendations. Further, the reported progress fell substantially short of what GAC members believed had been achieved during its meetings with registrars in Singapore in June 2011. The GAC also expressed concern that there was no clarity on how the other nine recommendations were being progressed, despite the registrars' agreement at the Singapore meeting to provide regular status reports.

The GAC informed the GNSO Council of its intention to request the ICANN Board to take prompt and concrete action to implement the GAC/LEA recommendations.

The meeting also addressed the GAC's proposal to the GNSO on the protection mechanism for the International Olympic Committee and Red Cross/Red Crescent names at the top and second levels. The GAC requested feedback from the GNSO on the proposal as a first step in collaborating on advice for the ICANN Board in this regard, consistent with the ICANN Board Resolution in Singapore.

The GAC looks forward to further engagement with the GNSO to work more effectively within the ICANN processes and reinforce the sustainability of the multi-stakeholder model.

#### **VII. Meeting with the At-Large Advisory Group (ALAC)**

The GAC met with the ALAC to discuss Conflict of Interest issues within the ICANN Board and staff. The GAC agrees that this is a critical matter that needs to be addressed as a high priority within the community.

The GAC and ALAC also discussed the Joint Applicant Support (JAS) Working Group as well as the ALAC and GAC Joint Statement. The GAC expects a decision to be taken for implementation in time for the opening of the first new gTLD round.

In light of the common interest of advancing improvements in the ICANN model, the GAC and ALAC also discussed the ongoing work of the Accountability and Transparency Review Team (ATRT). The GAC shared the areas identified as a priority in the framework of the ATRT and the Joint Working Group recommendations, looking forward to an expedited implementation.

#### **VIII. GAC Operating Principles**

The GAC amended Principle 47 of its Operating Principles clarifying its understanding of consensus. The definition now introduced derives from United Nations practice and understands consensus as adopting decisions by general agreement in the absence of formal objections. The GAC noted that according to UN practice individual members may make reservations, declarations, statements of interpretation and/or statements of position regarding a consensus decision, provided such texts do not represent an objection to the consensus [Annex II].

#### **IX. Joint session with the Country Code Names Supporting Organization (ccNSO)**

The GAC met with the ccNSO to discuss the progress and ongoing work of the Framework of Interpretation cross-community Working Group (Fol) on delegation and redelegation, and the mechanisms for the GAC to provide feedback and contribute to this work within a timeline that the ccNSO has provided. In addition, the ccNSO shared an update of its current work areas and its organisational structure.

The GAC is eager to further engage with the ccNSO to provide timely inputs on the different stages of the Fol work.

#### **X. Meeting with the Security and Stability Advisory Committee (SSAC)**

The GAC thanks the SSAC for providing an update on its work including blocking and reputation systems, WHOIS matters and single label domain names. Further, the GAC thanks the SSAC Chair for discussions on Root Zone Scaling and Resource Public Key Infrastructure (RPKI).

The GAC looks forward to receiving further updates on DNS blocking matters and other relevant security and stability related matters.

#### **XI. Meeting with the Nominating Committee (NomCom)**

The GAC met with the Nominating Committee and discussed the skill-sets needed of an ICANN Director, as outlined in the Accountability and Transparency Review Team (ATRT) recommendations to improve the selection process. The NomCom invited individual GAC members to provide further inputs.

#### **XII. Election of Vice-Chairs**

The GAC has reelected the current vice-chairs, Choon-Sai Lim (Singapore), Maria Hall (Sweden) and Alice

Munyua (Kenya) to continue their mandate for another year.

\* \* \*

The GAC warmly thanks all those among the ICANN community who have contributed to the dialogue with the GAC in Dakar.

The GAC will meet during the period of the 43<sup>rd</sup> ICANN meeting in San Jose, Costa Rica.

### ANNEX I

#### **Applicant Guidebook Module 3.1: GAC Advice on New gTLDs**

ICANN's Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and

various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on new gTLDs is intended to address applications that are identified by governments to be problematic, *e.g.*, that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

GAC Advice may take one of the following forms:

*I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.*

*II. The GAC advises ICANN that there are concerns about a particular application “dot-example”. The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.*

*III. The GAC advises ICANN that a particular application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing one or more government’s approval) that is implemented by the applicant.*

## ANNEX II

### Operating Principles Article XII Principle 47

The GAC works on the basis of seeking consensus among its membership. Consistent with United Nations practice,<sup>1</sup> consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection. Where consensus is not possible, the Chair shall convey the full range of views expressed by members to the ICANN Board.

Senator KLOBUCHAR. Thank you, Mr. Chairman.  
Ms. Dyson.

### STATEMENT OF ESTHER DYSON, FOUNDING CHAIRMAN OF ICANN, 1998–2000; CURRENTLY AN INDEPENDENT ANGEL INVESTOR

Ms. DYSON. Good morning, Chairman, Senator Klobuchar, Senator Cantwell. I’m Esther Dyson. I’m honored to be here.

I was the founding chairman of ICANN from 1998 to 2000. In fact, the first and only time I testified previously in Congress I was defending ICANN against charges that it was imposing a tax on the Internet. At the time, I believe, those charges weren’t true. We were charging sensible, realistic costs to maintain a system that already existed.

At that time, I also believed that adding new TLDs to the domain name system would be a good idea. However, over time and in the face of continuing disappointments with what ICANN did and became, I’ve changed my mind, and that’s why I’m here today.

First of all, ICANN’s process of consulting with the public hasn’t really worked. I’m the only person here talking on behalf of the real public, not on behalf of large trademark owners, not on behalf of big businesses, not on behalf of governments, not on behalf of nonprofits, but actually on behalf of the users, who I think stand

<sup>1</sup>Statements by GAC members related to such advice will be posted on the GAC website.

to be extremely confused if there's a proliferation of top-level domain names.

Either marriott.com and marriott.hotel are the same, in which case marriott.hotel is simply redundant; or they're different, in which case it's simply confusing. Then add dot-hotel, and then hotel.marriott, residenceinn.marriott, and so on. Now multiply that by hundreds or thousands of different top-level domains. It will create a profusion of new names for Marriott to protect without creating any additional value, because there remains only one Marriott.

That's why I think this whole idea is fundamentally misguided. It's akin to derivatives, which also create great complexity and new opportunities for transactions and, yes, both derivatives and domain names create opportunities for entrepreneurs. But they don't really create any value for the economy. That's my problem with this. I don't think any particular domain name is evil or should be illegal, but it's a big waste.

Finally, you could ask, what should ICANN do and what will happen if we have a lot of new domain names? I studied economics in college and I didn't learn a whole lot there, to be honest, but I did learn how to think. Fundamentally, economics is about math and common sense. Right now what we have is an artificially restricted scarcity of domain names. We can enlarge the group of domain names, in which case it will be artificial and somewhat enlarged, but the same issues will happen. Or we can say: We really believe in no scarcity at all; let's have as many domain names as anybody wants. And then you don't really need ICANN because there's nothing to protect. Or we can stick with the current situation and perhaps some measured expansion to accommodate non-Latin alphabets and the like.

In the long run, probably people will start looking for everything through the search engines and so domain names won't matter. But with ICANN's current plan, there's going to be a period to great confusion in the meantime. I don't think it makes sense to go through a period of several years where there's a profusion of domain names, a proliferation of the kinds of costs and abuse Angela Williams and Dan Jaffe talked about. It just doesn't make sense.

I understand ICANN is not responsible to Congress. I'm not suggesting that you in this room do much, other than what you are doing here, which is to raise the public's awareness of this issue. And then I hope that ICANN will go back and reconsider and somehow figure out how to actually get real consumers involved and maybe just stick to the international domain names which do make sense and which with luck will be properly regulated, largely by other governments.

But in general, I don't see the point of this program.

Thank you very much.

[The prepared statement of Ms. Dyson follows:]

PREPARED STATEMENT OF ESTHER DYSON, FOUNDING CHAIRMAN OF ICANN, 1998–2000; CURRENTLY AN INDEPENDENT ANGEL INVESTOR

Thank you, Chairman Rockefeller, Ranking Member Hutchison, esteemed Senators, Committee staff and others, for your attention to this important issue. As a

private citizen with a variety of affiliations but beholden to no single employer or institution, I am honored to be here today.

My name is Esther Dyson. I assume that I was invited to testify before this Committee primarily because I was the founding chairman of ICANN's board, from its inception in September 1998 until late in 2000. I continued as a member of the ICANN At-Large Advisory Committee for a year or two after that, and subsequently went on with the rest of my life. I am a casual user of domain names; I have a couple registered that I don't use, and then I have owned and used edventure.com since before my ICANN tenure. As an investor, a board member of non-profit and for-profit companies and as a user of the Internet, I do have a substantial interest in freedom of speech and freedom to innovate.

Other than that, I have no particular business interests in the domain name system, and I paid my own way here today. Moreover, unlike most of the public, I have the private resources, the time and the insider knowledge to come here to give you what I hope you will find to be an informed and useful perspective.

I come as a loving critic to improve ICANN, not to bury it.

### **Some Brief History**

When I joined the board of ICANN back in 1998, the majority of its members had almost no experience with the Internet and attempted to serve the interests of a broad public. At the time, our primary mission was to break the monopoly of Network Solutions (which managed .com among other registries), first by separating the functions of registry (which manages the list of names in a particular top-level domain) and registrar (which resells second-level domain names to the public).

We succeeded in that, and we also managed to launch a few new TLDs, including .biz, .info, .museum and .coop. Of those, only .biz and .info have had much success. Separately, a number of creative people—whose initiative I sincerely applaud—made special-purpose TLDs out of country codes (ccTLDs) such as .tv (Tuvalu), .md (Moldova), .ly (Libya) and most recently .co (Colombia).

At the same time, it's fair to say that .com retained its first-mover advantage as by far the leading TLD. Users instinctively type COMPANYNAME.com into their browsers.

I myself was a big fan of the concept of new TLDs. I believed that it would broaden the market, encourage innovation (as with the repurposed ccTLDs I mentioned above). . .and besides, why should ICANN enforce artificial scarcity?

But I have since changed my mind. Now I would like to explain why, and finally to suggest some paths forward.

### **Why I Changed My Mind—Confusing to the Public**

After my two-year term as chairman of ICANN expired in 2000, I joined the At-Large Advisory Committee. Our mission was to make sure the voice of the ultimate users—not just the sellers, resellers and buyers of domain names—was heard. That turned out to be an almost impossible task. Naturally enough, normal members of the public did not have the time or interest (or funds) to involve themselves in ICANN's business. Despite numerous attempts, we failed to attract more than a few thousand people at best to our various meetings, online conversations, requests for comment and the like. Our online message board was mostly painful to read. When I finally resigned from the ALAC, I too found ICANN too removed from my daily interests to pay much attention to its activities.

### **Why I Changed My Mind—Lack of Oversight**

Our premise for new TLDs was that we would select registry managers who would add value to their TLDs and monitor the behavior of their registrars, who would in turn make sure that the registrants followed whatever requirements the registries imposed. In fact, the business overall has become one of sleazy marketing practices, front-running (where registrars or related parties buy names for their own accounts, competing unfairly with their customers) and a high proportion of spammy domains. Unfortunately, the ease and lack of accountability with which someone can buy a domain name has led to a profusion of spam, phishing and other nefarious sites. There's no reason to think the situation would be any better with the next set of new TLDs; there would simply be more of them.

And as the case of .xxx shows, many of the second-level domain-name purchasers who do have honest intentions will probably be more interested in defensive registrations rather than adding value to the system. (One such case is that of Meetup.com, out of whose office I work and on whose board I sit. Meetup has attempted to register Meetup.xxx, but has been told the name has been reserved on the "premium queue" to be auctioned off to the highest bidder. Even more perversely, Meetup cannot even bid at auction for its own trademarked name unless it somehow becomes registered as a member of the "adult community," which is at

odds with the very nature of its business and the very reason it sought to reserve the name. Meetup's only remedy ultimately will be to file an expensive and time-consuming trademark lawsuit.)

#### Why I Changed My Mind—Misallocation of Resources

Our initial assumption was that new TLDs would be relatively cheap. But ICANN's current plan envisions an expensive application process and expensive registrations.

The amount of money likely to be spent on these new TLDs—both by new applicants and registrants, and by incumbents protecting their names—is huge, at a time when businesses and consumers are just scraping by. I believe in innovation, but only if it adds value. In this case, most of the new domains would simply add friction.

As with .xxx, where many of the registrants are actually companies who want to make sure their name is *not* used in .xxx, I predict that many or most of the new registrations will be defensive. Marriott.com, for example, works fine; why do they need marriott.hotels except defensively? (Or why do they need to own .marriott?)

The rationale is that there's a shortage of domain names . . . but actually, there's a shortage of space in people's heads. When you add, for example, .hotel, you are not creating new space; you are carving up the &laquo;hotel&raquo; space in people's heads into .com and .hotel. So was that Marriott.com or Marriott.hotel? or dyson.com or dyson.hotel? if I decide to rent out my apartment. Consumers will inevitably be confused, and the primary beneficiaries will be Google, trademark lawyers. . . and of course the registries and registrars.

In short, it's as if you owned a field, and you paid a border guard. Now the border guards want you to pay separately for each little chunk in your field; it's still the same field, but now it's carved into ever-smaller pieces. To use my own small field as an example, the field was originally called edventure.com. Now the new chunks could be labeled edventure.angel, edventure.blog, edventure.nyc, edventure.post, edventure.fin . . . and perhaps I'll also be solicited to buy the TLD .edventure so that some educational or editorial group won't get hold of it.

In the end, new domain names are somewhat like derivatives: They add complexity and transactions and lots of rights and obligations without actually creating anything of value.

#### Context: Innovation Can Happen Without New TLDs

I have heard from people who say that the new TLDs will lead to great innovation. I once thought so too. I had visions of .fin for For example, there are people who want to launch .eco and .green as the foundation of a &laquo;green&raquo; marketing campaign that would purportedly do untold good for the world at large. But what's wrong with edventure.com/green?

Meanwhile, there is innovation in namespaces, but it comes with overall innovation. One of the best and simplest examples I can think of is twitter, where I am @edyson or <http://twitter.com/#!/edyson>—a fine use of an *existing* TLD.

#### Remedies . . .

Of course, my task here does not end with complaining. What should be done? First of all, it is not the role of Congress to tell ICANN what to do. ICANN is accountable to the worldwide public, not to the U.S. Government (except through one limited contract). But it *is* the role of Congress to shed light on issues of public interest, and to suggest politely that ICANN follow through more fully on its acknowledged obligation to solicit public feedback. As I discovered during my time at ICANN, it's hard to get the public interested in these matters. (In that respect too, domain names are like derivatives.)

As I mentioned, ICANN has indeed followed the process of soliciting public opinion, but I do not believe they have obtained &laquo;informed consent,&raquo; in the sense that people actually understand the issues.

#### Much Broader Consultation With the Public

Therefore, although personally I would like to see ICANN simply abandon this program, I have been told again and again that this is not &laquo;realistic.&raquo; If that is indeed the case, I would recommend that ICANN rapidly re-launch its consultation process with much broader outreach. Perhaps these hearings and the subsequent press coverage will help to inform the broader public and shade ICANN's approach to new TLDs.

#### Much Stronger Front-End Protection

At the same time, ICANN could offer much broader and easier protection (from similar-sounding TLDs) to existing registrants, akin to what ICANN itself has and what the Red Cross is asking for. Of course, this would obviate much of the interest

in the new domain names, but it is a proper obligation for ICANN to undertake, in my opinion.

**Conclusion**

The current domain name system in some ways is an accident of history. ICANN was created to regulate it, independently of any government and on behalf of the Internet—and world—community as a whole. Just as with fishing rights, communications spectra, taxi medallions and other “commons,” there’s a delicate balance between too few and too many domain names, which this new initiative may well upset if it goes forward without more serious study. As the old saying goes: If it ain’t broke, don’t fix it!

I would welcome any questions.

Senator KLOBUCHAR. Thank you very much.  
We’ll now turn it over to Chairman Rockefeller.

**STATEMENT OF HON. JOHN D. ROCKEFELLER IV,  
U.S. SENATOR FROM WEST VIRGINIA**

Senator ROCKEFELLER. I went to college and I didn’t learn very much either, so don’t feel badly about it.

This hearing is interesting because—and I missed the first part and I have to leave after I make a couple of remarks, because I have the worst schedule in the history of the whole week.

[Laughter.]

Economists I think are not entirely in agreement as to whether this is a good thing or a bad thing. So to declare it a bad thing—trying to be a neutral chair as we look at this whole thing—is a point of view, but it’s a point of view which I also recognize has some people on the other side of it.

Cybersquatters are an abomination. So are people who abuse children through websites on Facebook and all the rest of it. Lots of abominable people around. But the question is are we going to have hundreds, are we going to have thousands of new names? If you look at dot-com, dot-net, dot-org, and then you sort of go to dot-hotel, dot-baseball, dot whatever it is, how long does that extend out? How much actual difference does that actually make?

I have to be very sensitive to the question of the money that you feel you’re going to have to spend to protect yourself against cybersquatters, and I think they’re going to be endless. They will go on as long as the Internet goes on. Hopefully they won’t blow us up altogether on a worldwide basis, because they can do that, they can shut us down, the Internet can. But that’s not the point.

I think we have to get used to dot-hotels, I think we have to get used to dot-auto. I start from that position, but I listen. And I think a surge of new names and addresses can create opportunities. Whether they will or not or whether they will at such a cost-inefficient ratio, I do not yet know. And that’s part of what we’re discussing today.

If ICANN is determined to move forward, it surely better do so slowly and cautiously, not try to do this in a tranche or two. The potential for fraud, the potential for consumer confusion can lead to fraud without a knowing act, cybersquatting, all of these are massive. Scaling back the initial round of top new-level domains introduced in 2013 may be a prudent approach if that’s the way we’re going to go.

Companies, nonprofit organizations, and others are rightly concerned that this new landscape will require them to spend money.

You have said that. I didn't hear the first three, but karma told me you said that.

So it is my hope that we can phase this expansion over time. If we're going to do it, we should phase it over time, not be regretful after the fact that it was done too hastily. That's the point. If we can make sure that we don't have to look back with regret, then we will have not been too hasty.

You know, that said, there are exciting new possibilities out there. This is intriguing in many ways. Companies and others will be able to place their name. You can get dot-search, dot-banks. I mentioned dot-baseball. I care about that more than I should. And with the current plan, the sky is the limit. That's both the challenge and the threat, from your point of view, and maybe mine.

So as the Senate committee tasked with examining issues related to the Internet, we have to understand what this really will mean for the people you purport to represent, but we all feel that we represent, too, for the millions of Americans who use the Internet on a daily basis and the thousands of businesses and organizations who do exactly the same.

So the matter of unintended consequences strikes me as a very important subject for today. One cannot—if they're unintended, by sort of definition one can assume that they will happen, but one cannot predict absolutely they will happen. An unintended consequence is something which has not yet happened, and it could be a good consequence, it could be a bad consequence, usually bad.

I know ICANN has undergone a very lengthy process on the top-level domain expansion. The decisions will hopefully spur additional competition and innovation on the Internet. I tend to look upon that as a good thing. However, many in the Internet community—witness what you were saying—don't like the unintended consequences and the manner in which this expansion is being conducted.

So today what we're going to do is discuss those opportunities. It's important to remember that ICANN is nonprofit, and it was established in 1998 at the behest of Department of Commerce. The U.S. Government rightly decided that a private entity representing the interests of the entire Internet community should administer the critical infrastructure of the Internet.

So let us go forward. The multi-stakeholder approach will not work without all of you and without us. We need to have a constructive attitude within ICANN, within NTIA, and the Internet community. So here we are launching on something new. Those who are satisfied with what is the current situation are almost necessarily nervous about a different future. Is it necessary to be nervous about an unknown future when economists cannot agree whether it will be a good thing or a bad thing? I think it's a natural thing, and that's the way you feel and therefore that's what counts. That's what we have to hear.

I remain open to the discussion and grateful to Senator Klobuchar.

Senator KLOBUCHAR. Chairman Rockefeller, in light of time do you want to do your questions now?

Senator ROCKEFELLER. No, thank you.

Senator KLOBUCHAR. OK, very good. And I know Senator Boozman's going to make a few comments here.

**STATEMENT OF HON. JOHN BOOZMAN,  
U.S. SENATOR FROM ARKANSAS**

Senator BOOZMAN. Thank you, Senator. I think, in the interest of time, as the Chairman mentioned there's just so much going on, that I will hold off for now.

Senator KLOBUCHAR. OK, very good. And if my other two colleagues don't mind, I think we'll just get started with the questions, and if there is time remaining before we have to end at ten minutes to twelve o'clock, then we'll do some statements at that time, and there may be.

I'm going to get started here. Mr. Pritz, I have some questions about the funds that ICANN will generate through this proposed program for expanding top-level domains. As I understand it, ICANN is charging \$185,000 for each top-level domain application; is that right?

Mr. PRITZ. That's correct.

Senator KLOBUCHAR. OK. And then how many applications do you expect to receive? I've heard there could be hundreds. Is that right?

Mr. PRITZ. That's right. That number is a matter of great speculation. When we first started making estimates, the number was thought to be 300 to 500. Over time and as interest is generated, I think the number is greater than that now. But that's sort of rumor. We're kind of—

Senator KLOBUCHAR. You thought it was going to be 3 to 5 and it went up to hundreds?

Mr. PRITZ. No. We thought it was going to be 300 to 500. I'm sorry.

Senator KLOBUCHAR. 300 to 500. And now—

Mr. PRITZ. Now it's greater than that.

Senator KLOBUCHAR. You think it might be thousands now?

Mr. PRITZ. Not thousands, but 500 to 1,000 or maybe slightly over 1,000. And that's based on hearsay. A lot of companies that are planning for this are keeping their plans close to the vest, which makes a lot of sense because it's a business strategy. But I know that a lot of large corporations are developing different strategies for taking advantage of the opportunities, and that other segments that are interested are small communities. There is interest in internationalized domain names, which are names in other languages than English to the right of the dot, which will open up some additional opportunities; and also there is—

Senator KLOBUCHAR. What if more than one entity bids for one of these? Then what are you going to do? Like one hotel chain wants to be dot-hotel and another hotel chain wants to be dot-hotel?

Mr. PRITZ. That's a really interesting question. It was the matter of a great amount of work. There's really three steps in what we call a contention resolution process, if two entities apply for the same name. First, the entities are encouraged to work it out between themselves. So rather than other arenas, we encourage them

to get together and try to come to some solution, either by combining their efforts or having some other sort of accommodation.

There's also an accommodation for certain types of TLDs that are labeled community TLDs. So recognizing the value that communities bring to the DNS, the policy is to encourage the development of community-type TLDs. TLD applicants that can establish that they are in fact community TLDs by being weighed against certain criteria will be given a preference. So a community TLD would be awarded the TLD before a non-community TLD. And then finally—

Senator KLOBUCHAR. Are you talking like NYC or something like that?

Mr. PRITZ. It could. There's criteria in the guidebook that says you have to be part of a longstanding community, that the name you are applying for is really closely related to the community, that you have the support of the community, that there's not—there's not any contradiction from that community. So it's a set of criteria that are really scored.

Senator KLOBUCHAR. What about Ms. Williams' concerns about nonprofits and how difficult it would be for them to compete in this auction process?

Mr. PRITZ. So one answer to that is if YMCA qualifies as a community then they would get a preference.

Senator KLOBUCHAR. But do they still have to pay that much money?

Mr. PRITZ. Yes, so the \$185,000 is—well, there's two answers to that question. One is the \$185,000 is a cost-based fee, and we've been public about our calculations for how much it costs to receive a top-level domain. They're not to be awarded lightly. You have to meet financial and technical criteria and show you have the wherewithal to actually operate a registry, which is a piece of Internet infrastructure.

But also, ICANN has a support program that the board just recently approved, that for certain deserving candidates the application fee will be lowered from \$185,000 to \$47,000. But admittedly there's a limited amount of funding for this and we're trying to generate more funding, and that's another avenue.

Senator KLOBUCHAR. So if you have these auctions, it could go above \$185,000 if different companies are vying for this name?

Mr. PRITZ. So—

Senator KLOBUCHAR. And then what happens with that money if you end up having a big surplus?

Mr. PRITZ. So the answer to the first question is, yes. There's a market theory that funds flow to the most efficient use in the market and so the company that bids the highest in the auction would pay a higher price. But we also recognize that by encouraging the entities to negotiate it's more economical for them to arrive at an accommodation than pay an auction fee.

Second, ICANN's been very public about any fees received from auction will be put into a separate fund and the whole Internet community gets to discuss the use to which those funds are put. So ICANN's a not-for-profit, right, so it's a zero-sum game. So those funds might go to fund Internet security projects or combat

cybersquatting or other crime or fund other needy applicants, something like that. Those are the things that have been discussed.

Senator KLOBUCHAR. Last question I have. I'm sure you're aware there's been a lot of discussion over the past few months related to potential conflict of interest at ICANN with the departure of a former chair, not Ms. Dyson. What are you doing to respond to those concerns?

Mr. PRITZ. Well, first, again two things—and I usually speak in threes. First, ICANN has a very robust conflicts policy. I sit in board meetings. Board members that are conflicted must make a statement of interest and they're often excused from the room in the instances of many discussions. There's a training class for all board members and officers to go through regarding conflicts of interest. So if you were to read the conflicts of interest policy ICANN has, you would find it to be very robust.

Additionally, the ICANN board recently approved an enhancement to that policy where any board member who votes on or discusses a potential new gTLD application cannot be hired by that gTLD for a period of 12 months after leaving the board. There's also new rules around declaring interest and being excused from conversations and votes.

So in my opinion we're already at a gold standard, but I was recently hired by the board recognizing the concern over that issue.

Senator KLOBUCHAR. And—

Mr. PRITZ. Just—I'm really sorry. I also want to say—I'll talk in threes—that there's no evidence that the former chairman had discussions about future employment before he left ICANN. That's sort of the test, that he was exploring that while he was undertaking this policy discussion.

Senator KLOBUCHAR. OK. Well, I want to turn it over next to Senator Boozman, and then I will go to maybe some follow up with the rest of the witnesses. Thank you.

Senator BOOZMAN. Thank you, Madam Chair. With your permission, I would like to defer to Senator Ayotte.

Senator KLOBUCHAR. OK. Senator Cantwell was actually next and I was trying to defer to you as the Co-Chair.

But do you have a time conflict?

Senator BOOZMAN. No, no. Go to her and then come back.

Senator KLOBUCHAR. OK, all right. Then we'll go to Senator Cantwell and Senator Ayotte.

Senator BOOZMAN. I'm sorry. I was just doing time and time.

**STATEMENT OF HON. MARIA CANTWELL,  
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Madam Chair, and thank you for holding this important hearing.

I guess my questions are a little bit broader than just the subject at hand, although I certainly appreciate everyone's testimony this morning and the policy issues that are at discussion. But I have a broader question about authentication and integrity, because that to me is the issue that we're dealing with at the broadest level, and the new DNS security system and the implementation of that security system seems to me to be a pretty big priority if we want to

continue to protect and identify authentication in ways that will help the Internet continue to be the robust vehicle that it is.

Yet some of our colleagues over on the—over on the—it's not “the other side”—maybe it is from the Commerce perspective—on the Judiciary Committee side are looking at Protect IP. So I wanted to ask, Mr. Jaffe, do you believe that the objectives of Protect IP—or maybe even Ms. Dyson. The problem is is that the objectives of Protect IP are counter to the objectives of the DNS security system. And it seems to me if we're always playing whack-a-mole at trying to find out who's doing what, then if you have more domain names you're going to be playing whack-a-mole even more greatly, and the objective here should be enforcing security and implementation.

Is that right, Ms. Dyson? Do I have that right?

Ms. DYSON. Well, fundamentally, there's a bunch of issues here. One is simply for any particular domain name can you find the person or entity who has the economic interest in it and controls it. If the records are not kept properly—and in many cases they're not, and there's no reason to suspect they'd be kept better and a lot of reasons to suspect they'd be kept worse if the system got enlarged—you can't find that person, whether it's a question of fraud and misrepresentation or IP stuff or pedophiles or whatever.

Whatever your opinions on SOPA, these are just orthogonal issues. The challenge with new domain names is there's probably going to be even laxer oversight, because ICANN's resources are already stretched. You've heard that. And in this case this, we really are talking about a tax on the Internet, a tax to support protections against a whole bunch of so-called attractive nuisances that can be created at will.

We have some domain names because it's valuable to have a registration system for the Internet. But creating a whole new set of redundant names isn't useful and leads to people coming in who are not in fact redundant, but are just stealing brand value, trademarks, and all kinds of other value from the rightful owners.

Mr. JAFFE. Senator Cantwell, if I could also interject. Yesterday, as I mentioned, the chairman of the FTC said that this program would be a disaster both for business and consumers. That's a very much stronger statement than he usually makes in these areas. One of the reasons that he was so concerned is just because of the subject that we're talking about, which is the whole question of authentication.

I'd like to put a chart up just to show you some of the problems that this causes, because there are some technical issues here that need to be understood, but once understood you get the clear view as to why law enforcement groups are truly deeply concerned.

The papers were handed to the staff earlier; if they could provide them to the Senators so that they can actually see, just in case. This is an eye chart and if you could put that up. Yes.

What happens is there's something called the thicker WHOIS program, and that is to let you know who is lying behind the IP addresses. So somebody may be doing things that are causing harm. This certainly happens to many of the companies that we represent, and they spend millions of dollars now to fight this problem.

But when they go to the thicker WHOIS they often find that the names that are there don't lead you anywhere, and therefore, you cannot really resolve the problem. What I'm showing here is not just a picture of Mickey Mouse and Donald Duck, but those are the actual names that as you dug into the thicker WHOIS, you would find. We don't believe that Donald Duck and Mickey Mouse are the ones who are causing the cybercrimes, the cybersquatting, typo squatting, phishing.

So if you don't know that it's somebody other than Mickey Mouse or Donald Duck, then you can't really solve this problem. Despite the fact that ICANN claims that it is going to be tightening up all of these restrictions, as I mentioned in my testimony, of the 12 specific recommendations of the law enforcement community that were given to them to make sure that the registrars and registries were operating appropriately, only three were being even considered and none of them have been acted on.

This is a really serious issue that is going to multiply enormously. You're talking about an exponential increase. You have a terrible problem right now with 22 domains. There are millions, hundreds of millions, of secondary domains. Once you start going to 300 or 500—now we're hearing that it may go much higher. I don't know whether it's going to be a thousand. But whatever that number is, it is an extraordinary increase. If they can't take care of it under the existing situation, why would anybody be able to think that they would?

This is putting an enormous cost on the business community, on the not-for-profit community, and at a terrible time in our economy, where this money should be better used for jobs. That's why we are saying that there should be a pause, that there is not, there is not a consensus. They are supposed to under the Affirmation of Commitments to have a consensus of agreement. If so many people in the business community feel so strongly, the not-for-profit community feel so strongly, if the FTC and other law enforcement groups all feel so strongly, where is this consensus? Who is it that's calling for this?

There is nothing sacrosanct about this January 12 date. We should not leap out at this time in the economy's situation to take this kind of experiment with no reason to believe—their own economists say that the benefits are speculative. But I can tell you from talking to hundreds of our members, hundreds of our members, that they're saying that there's no value here for them.

So there are billions of dollars that are going to be spent and it's not going to be providing a use for the economy.

Senator CANTWELL. Thank you, Mr. Jaffe. I know my time has expired, Mr. Jaffe's time, on that question. But I hope that we do make this issue of authentication and the DNS security the number one priority here, because that is what's really, the integrity of the Internet, we need to continue to protect.

So I do look at it in the lens that you just described.

So thank you, Madam Chair.

Senator KLOBUCHAR. Thank you very much, Senator Cantwell.

**STATEMENT OF HON. KELLY AYOTTE,  
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator AYOTTE. Thank you, Madam Chair.

I want to follow up with what Senator Cantwell asked about, because I think this is a real deep concern. Mr. Pritz, how do you respond to Chairman Leibowitz's comments he made yesterday that it would be a disaster for the business and consumer. From my background as the Attorney General of our state, I know what a challenge it is for law enforcement to investigate these types of crimes. It really makes me concerned when I hear things like 12 recommendations made by the law enforcement community to address concerns related to the action you're about to take and only 3 were even considered.

So can you please address these deep concerns that we all have?

Mr. PRITZ. Certainly, because we share the same concerns and want to launch this program and create an Internet that's safe, stable, and secure. So there's really several answers. I'm going to just start at the last one. There are 12 law enforcement recommendations that they developed in consultation with ICANN-accredited registrars and right now ICANN is renegotiating the contract it has with registrars to adopt as many of those recommendations as possible.

In fact, since I'm in Washington, D.C., I'm going to leave here and this afternoon the ICANN staff is meeting with registrars, and have our third meeting to discuss not only the 12 law enforcement recommendations, but also recommendations from ICANN's policy-making body for improving registrant protections by changing the contract we have with registrars.

So the number of three is sort of incorrect. Our GNSO is considering three of those recommendations, but in fact in a face-to-face bilateral negotiation ICANN is working with registrars to adopt as many as possible.

Senator AYOTTE. One thing that leaps out at me is that we are talking about a January rollout and you're negotiating things that are incredibly important when we think about protecting consumers from fraudulent actions. The Internet is a wonderful tool, but also has been used by predators and other bad actors with ill intent.

So when I hear "negotiations ongoing" for something that's a January rollout, I am concerned why are we rushing into this. So how do you respond to that? And then also I would like to hear you respond to Chairman Leibowitz's comments.

Mr. PRITZ. And I will. So the negotiations are targeted at delivering a new registrar accreditation agreement by the springtime. I forget when the ICANN meeting is, but I think it's in March or April. So the timetable for delivering a set of amendments for that is then.

I think the job of improving the safety and security of the DNS, the domain name system, never stops. It's ongoing. Part of what's in our testimony is that many new protections for registrants and for Internet users are embedded in the new gTLD process. So there's a series of trademark protection mechanisms that have been developed by—the great thing about ICANN is if you have a

hard problem to solve you can get world-class experts to sit around the table.

So for trademark protections, we sat with 18 well-recognized IP attorneys and developed trademark protections. We also developed a set of malicious conduct mitigation measures that each new TLD will be required to adopt. How did we develop them? We get Internet security experts from the anti-phishing working group and other groups called the Registry Internet Security Group, and FIRST is another one.

So we called experts together, and embedded in this process are substantial protections for trademark holders and then measures to mitigate malicious conduct. Some of those measures are the requirement to adopt this DNSSEC that we talked about earlier, stringent criminal background checks, checks to determine if a new gTLD applicant has had a history with UDRP where he's been taken to arbitration over domain name abuse.

There's an elective security program for institutions, such as maybe a dot-bank that wants to provide higher security. There's a strong incentive for registries to provide searchable WHOIS and a requirement to provide a centralized zone access and I say those two things together because that makes it easier for law enforcement to search data bases and hook up criminal activity.

So all these were meant to provide protections and provide new tools for law enforcement. So that was a great big of work. But I agree with you that the work is ongoing, and that's why we've accelerated. We have these recommendations from law enforcement and we're accelerating this negotiation with registrars and want to bring to you and the rest of the Internet community some results on it.

Senator AYOTTE. Well, appreciate results on that, except it seems to me that these are inherently very, very important issues and it doesn't make sense to me that you'd have a January 12 rollout with outstanding issues that are as important as you describe with respect to the negotiations that will impact important protections for consumers and the law enforcement community.

I would just say it is very challenging for a member of law enforcement to investigate these kinds of cases. As I hear your testimony, you're not even sure how many applications you will have at the end of the day when you open this up. So that is really going to be a challenge when you go from 22 to, who knows, a thousand. And it seems to me that that in and of itself is going to be a huge challenge for law enforcement. It seems to me that caution should be used to make sure that we don't rush into this.

So I appreciate you all coming to testify today on this very important issue.

Mr. PRITZ. I didn't answer your last question.

Senator AYOTTE. Well, my time is up.

Senator KLOBUCHAR. If you want to, that's fine, if you want to answer it.

Mr. PRITZ. Sorry. So we take the comments of Mr. Leibowitz very, very seriously. We've received—as we developed this program, we received comments from representatives from other governments along the same line, and have worked very closely with gov-

ernments to develop the protections that are here, and intend to monitor.

There's an automatic break in the process. It's slowed down after the first round so that we can measure the effectiveness of the trademark protection mechanisms and the sorts of things that Mr. Leibowitz was talking about. Particularly I know he's talking about improving the accuracy of the WHOIS data, and ICANN has a four-pronged approach to that.

So anyway, we take his comments very seriously. We've heard them from others throughout the development of the program and we pledged to him, and want to have further conversations with him, but to everyone, to monitor this program as it goes to make sure that improvement for law enforcement and for everybody is a continual improvement process and not a one-step process.

Senator KLOBUCHAR. Thank you very much, Senator Ayotte.

I think you've heard today, Mr. Pritz, from—and I have some additional questions—from someone, Senator Cantwell, who spent her life working on protecting the Internet, and now you have two prosecutors up here, who focused very much on consumer issues and crimes. I think you've heard some of our concerns.

I know we don't have—Congress may not be able to stop this, but I think that there are some concerns with this process and what's happened here that are worth listening to.

I wanted to follow up, and I also realize that the three of us also have had the experience—I can say I have—where people try to register your own name, as elected officials. Right now, I don't know how much it costs to get those. It costs us something. This is everything to the left of dot-com. If we had to start paying \$185,000 and get in an auction, Senator Ayotte and me, that would be a whole other problem.

So I think you're hearing some of the concerns that you are going to hear from the public. One of these is this defensive registration idea. Companies, universities, and nonprofit organizations, as I've mentioned, have spent a lot of time and money over the last decade on so-called defensive registrations, registering their names in top-level domains that they never have any intention of using, but because they don't want someone who's committing fraud or someone who's trying to use their name in any way to use it.

For example, Indiana University recently said they are buying 11 names. These include hoosiers.xxx, Indiana University, just to give you a few of them.

I'll start with you, Ms. Williams. Ms. Williams, have the YMCA and other nonprofits felt the need to engage in defensive registration?

Ms. WILLIAMS. Yes, Senator, we have. And the question is can we really afford it? When you look at cost and capacity, there is just not a connection in how we can defensively maintain the value of our brand. Our brand is everything. There's the issue of public confusion. In fact, one of our large not-for-profits was recently involved in an issue where another organization registered with their same name, received an Internet domain name, and began raising funds under that large not-for-profit's name. There was public confusion.

Imagine when this new gTLD program goes into effect, how that could really impact us. So there is absolutely some concern.

The YMCA, we did register *ymca.xxx* to protect ourselves. But we can't afford to continue to keep trying to do this in order to protect our brand. And when I mentioned capacity, when you think that there are over 1.5 million nonprofits in the United States alone and most of those nonprofits are very, very small, do not have the expertise or the intellectual capacity to even address an exponential growth in the Internet, it's just incredible and, quite frankly, scary.

Senator KLOBUCHAR. Mr. Jaffe, have your companies—I know I've heard from a few, so I think they have. But have they felt forced to make defensive registrations like Ms. Williams mentioned in the nonprofit sector, like we have seen in the government sector?

Mr. JAFFE. Absolutely. And this will, as I said before, will be exponentially increased over time. It just never ends, because we're now hearing that this may be a thousand names. Every time there's a new top-level domain, it generates thousands and thousands and thousands, and maybe even hundreds of thousands of secondary domains. There's 22 top-level domains. There are more than 100 million secondary domains. So if you start to multiply this up, just start to imagine what this means, what do you think this is going to mean for consumers?

I would like to at least respond to something that Mr. Pritz said. The whole effort in regard to these legal issues has been going on for years. Chairman Leibowitz had asked for better WHOIS data since 2003. The GAC proposals have been pending for more than 2 years. Nothing has happened. Why do we think that suddenly we are going to get all of these problems resolved?

I'd like to put up, if I could, one more chart that just shows you how defensive domains work.

Mr. JAFFE. I would put up the pictures. I'm sorry that I don't have a picture of the Senators who are here, but you can be assured that you also are honored by those who have—

Senator KLOBUCHAR. I see you have more senior Senators up there, yes. Senator Ayotte and I note that.

[Laughter.]

Mr. JAFFE. You are also honored by this same effort.

Senator AYOTTE. I can assure you we've been subject to it.

Mr. JAFFE. There are people who are out there buying names on the hope that you will be in campaigns or otherwise will want to have the ability to buy your name back, just as companies are going to have to buy their name back. That's what we're talking about here. To protect themselves, they're going to have to take the brands that they have spent billions of dollars to develop and then, so that somebody else will not take those from them, they're going to have to register them, they're going to have to pursue across the whole of the Internet, or they're going to have to buy a Top-Level Domain.

I have been told by a number of companies that they absolutely do not want to do this, they see no value in it, but that they may be forced to do it. And when we're talking about billions of dollars here, when we're talking about companies with 3,000 or more brands, even big companies will be facing really large expenses.

So this is a very, very significant economic issue for this country and for the world. And as you can see—

Senator KLOBUCHAR. And that's *FrankLautenberg.com* waiting to be adopted? They're just suggesting this could be bought by anyone?

Mr. JAFFE. Yes. It exists, but they're offering it for sale to anybody who wants it, and that doesn't have to be Frank Lautenberg. That doesn't have to be Senator Klobuchar, or that doesn't have to be Senator Ayotte.

Senator KLOBUCHAR. I understand that. That didn't look like Frank Lautenberg.

Mr. JAFFE. Whoever has it, if you want it back I'm sure they'll be willing to sell it to you for a very high price.

Senator KLOBUCHAR. Yes.

Mr. Pritz—do you have any other questions, Senator Ayotte?

Senator AYOTTE. No, thank you.

Senator KLOBUCHAR. Mr. Pritz, do you want to respond to this cost of defensive registrations, what this could mean if you start opening up the right side of the dot to even more names, and the multiple names that you may have to buy to defend yourself?

Mr. PRITZ. Surely. It's a very, very important issue and it's taken up a lot of time over the last several years. There's—and we've undertaken economic studies and those studies indicate and all the evidence indicates that there's not going to be a dramatic increase in the need for defensive registrations, and I'll try to explain why.

First—again, it's two-pronged. First, there's a set of trademark protections that have been developed by IP experts, all targeted at providing relief for people that have an interest or a property right in a name, making it possible for them to protect their name without a defensive registration. So there is a notice to anybody who tries to register a registered trademark. There is a rapid takedown system that's cheaper and faster than the current UDRP system for taking down trademarks. There's a post-delegation, it's called, post-delegation dispute resolution process, where property owners can go directly after registries, not after the registrants, if the registries are actively involved in cybersquatting or some other crime.

And there's others. So there's a set of trademark protections that, again the beauty of ICANN, developed by experts, to target this problem.

The other part of it, though, really is the architecture of the Internet. Where does this abuse take place? It takes place in the very largest registries, because that's where the abuse pays off. Typo squatting occurs because people type in—people still type in addresses into their browser, and they type in “ymcaboys.com” or “ymcacamp.com,” and so those are names registered by typo squatters. But that occurs only in common.

Historically, property owners, property rights owners, have not registered those types of defensive registrations in smaller new TLDs or new TLDs simply because it doesn't pay off.

Senator KLOBUCHAR. OK. I'm just trying to picture this. Maybe if you're a Hilton or Marriott or you're 3M and you get this notice that someone's using your name-dot, you're going to be able to respond. But I'm picturing—my fear on those domain names, when we bought a bunch of them defensively, was that somehow we'd miss them in the post office box. And I'm just trying to picture

small businesses or nonprofits that wouldn't get this notice and someone just buys the name for \$185,000.

Ms. Dyson.

Ms. DYSON. So I'd like to tell very briefly the story of *meetup.com*. We have about 60 employees. We tried to register *meetup.xxx* for precisely all these reasons. We were told that "meetup" was such an attractive name for dot-xxx that it was on some kind of reserved list, so we can't even register it defensively. We can wait for someone to buy it and then we can file a trademark lawsuit. That to me is not a satisfactory approach, and that's for the existing dot-xxx, not even for the new ones.

Senator KLOBUCHAR. All right. In June of 2010 three economists from Berkeley, Stanford, and the private sector submitted a study to ICANN—we've been talking about studies here—that a slower rollout of Top-Level Domains would help address concerns about this new application window. They said, in their words: "By proceeding with multiple rounds of application, the biggest likely cost, consumer confusion, and trademark protection can be evaluated in the earlier rounds to make more accurate prediction about later rounds."

I think Senator Ayotte was talking about waiting until some of these, at least these law enforcement and other things, resolve. But what about this idea of doing this in rounds or trying as you've expanded? I think my staff told me in the year 2000 and the year 2004 to get to your total of 22—to seem to go up to thousands of names before you have even these agreements worked out—you can understand why you're hearing concerns from these Senators.

Mr. Pritz, what is ICANN's response to the analysis from 2010?

Mr. PRITZ. We fully commit to evaluating the effectiveness of trademark protections after an initial round, and in fact have committed to that with our governmental advisory committee.

Senator KLOBUCHAR. What would the initial round be when you're talking about over a thousand now?

Mr. PRITZ. No. So the initial round—so the new gTLD introduction is limited by rounds. So we will have—and it's also limited by demand. So an application window will open on January 12 and it will close on March 12. During that time period we will receive applications for which there is demand.

Then after that we'll process those applications, do studies, and feed that back.

Senator KLOBUCHAR. So you don't have a number limit on it?

Mr. PRITZ. That's correct. So we did a round in 2000 and in 2004. The 2000 round was limited by number. We chose 7 out of 200 applications. The round in 2004 was limited by type. They were limited to like a community type of TLD.

Senator KLOBUCHAR. What's this limited by?

Mr. PRITZ. In those two rounds, we found that the benefits expected were not realized because those rounds were curtailed. It also put ICANN in the position of being a decisionmaker, making it sort of a beauty contest and ICANN deciding between winners or losers.

So this time we want to allow all TLD applicants who apply that meet very stringent criteria. So our limitation is a very high bar. They have to meet stringent technical and financial criteria to

show, like I said before, the wherewithal to run a registry. So it's a significant undertaking. And we've sought, through this big fat applicant guidebook, to educate potential applicants into all the requirements that they have to meet, in addition to the new—in addition to the new protections.

Senator KLOBUCHAR. Do you want to respond to this idea, Mr. Jaffe, Ms. Dyson, Ms. Alexander, about the rounds?

Mr. JAFFE. I would just like to draw the Committee's attention to a letter that was sent last night to the Department of Commerce. It was from the renowned economist Dr. Robert E. Hall, who's the Joint Professor of Economics at Stanford University and Senior Fellow at Stanford's Hoover Institution, and he was the 2010 President of the American Economic Association. He did this in conjunction with Michael A. Flynn, another expert economist.

This is what their conclusion was: "An unlimited expansion of gTLDs would not add anything material to product variety facing Internet users. It would merely create a costly nuisance for those users. ICANN is sponsoring a perversion of the economic analysis that it commissioned by even suggesting that this nuisance has net benefits for the Internet community."

Doctors Hall and Flynn then go on to urge the Secretary of Commerce, "to take action to block the unlimited expansion of gTLDs" unless and until ICANN can demonstrate, "that any such expansion or a limited expansion on a case by case basis would be in the public interest and that the benefits to any expansion would exceed the clear costs that the expansion would impose on the global multi-stakeholder community that ICANN serves."

[The material referred to follows:]

AFE CONSULTING  
Oakland, CA, December 7, 2011

Hon. JOHN BRYSON,  
Secretary,  
U.S. Department of Commerce,  
Washington, DC.

Dear Secretary Bryson:

AFE Consulting, at the request of the Association of National Advertisers (ANA), is carrying out an economic analysis of ICANN's announced intention to allow and encourage a virtually unlimited expansion of the Domain Name System (DNS) by adding many hundreds of new generic Top Level Domains (gTLDs) to the 22 already in existence and to continue to expand the number of gTLDs by the thousands in later years. The authors of this letter are professional economists leading the AFE study. We have reached the conclusion that this dramatic alteration in the landscape of the Internet would be contrary to the interests of both consumers and businesses. Our brief biographies are attached at the end of this letter.

ICANN's authority to consider the possible expansion of the number of gTLDs dates back to the November 25, 1998 Joint Memorandum of Understanding between the U.S. Department of Commerce and ICANN. We believe it is critical to keep in mind this foundational document, which, among other provisions, requires ICANN to:

Collaborate on the design, development and testing of a plan for creating a process that will consider the possible expansion of the number of gTLDs. The designed process should consider and take into account . . . potential consumer benefits/costs associated with establishing a competitive environment for gTLD registries.<sup>1</sup>

<sup>1</sup>Memorandum of Understanding Between the U.S. Department of Commerce and Internet Corporation for Assigned Names and Numbers, November 25, 1998.

In December 2008, as ICANN proceeded with its plans for the introduction of new gTLDs, the U.S. Department of Commerce wrote to ICANN's Chairman Peter Dengate Thrush:

[I]t is unclear that the threshold question of whether the potential consumer benefits outweigh the potential costs has been adequately addressed and determined. In that regard, we would like to call to your attention a decision of the ICANN Board on October 18, 2006, that called for an economic study to address [this and related questions] . . . ICANN needs to complete this economic study and the results should be considered by the community before new gTLDs are introduced.<sup>2</sup>

Following its receipt of that December 2008 letter, ICANN acknowledged that:

[S]everal members of the ICANN community requested that ICANN commission economic studies that would specifically address the possible economic consequences of new gTLDs. . . Accordingly, ICANN retained the services of economist Dennis Carlton, who recently had served as the chief economist to the United States Department of Justice Antitrust Division.<sup>3</sup>

Thereafter, in March 2009, Carlton issued a report in which he concluded, generally, that:

ICANN's proposed framework for introducing new TLDs is likely to improve consumer welfare by facilitating entry and creating new competition to the major gTLDs such as *.com*, *.net*, and *.org*. Like other actions that remove artificial restrictions on entry, the likely effect of ICANN's proposal is to increase output, lower price and increase innovation. This conclusion is based on the fundamental principles that competition promotes consumer welfare and restrictions on entry impede competition.<sup>4</sup>

But in his series of reports, Carlton never squarely addressed or analyzed whether or not the potential future benefits of ICANN's gTLD expansion would outweigh the future costs.

To remedy this shortcoming (of which many took notice), ICANN turned to Michael Katz<sup>5</sup> and Gregory Rosston for additional economic analyses. They submitted a series of three reports in June 2010, December 2010 and February 2011. In their third report—the final economic analysis of the new gTLDs received by ICANN—Katz and Rosston conceded:

[O]ur report does not conclude that benefits will exceed costs for new gTLDs as a whole. . . . The purpose of [our report] is to lay out a structure within which to think about the benefits and costs of new gTLDs.<sup>6</sup>

They added:

[Our report] summarized prior studies on issues relevant to the introduction of new gTLDs. The report identified shortcomings of specific studies and concluded that existing studies were incomplete. *The central finding was that additional information should be collected.*<sup>7</sup>

At the end of this series of economic reports that ICANN itself had commissioned, ICANN reported:

Ultimately, ICANN obtained reports from several economists, including some of the world's leading economists who specialize in competition issues. . . [T]he studies made clear that the economists did not anticipate that the costs that might be associated with new gTLDs would outweigh the overall benefits of their introduction, and determined that it was too difficult to predict. . . As a result, ICANN's Board has concluded that there is no economic basis that would justify stopping the New gTLD Program from proceeding and no further eco-

<sup>2</sup>Letter to Peter Dengate-Thrush from Meredith A. Baker, December 18, 2008.

<sup>3</sup>ICANN, *Rationale for Board Decision on Economic Studies Associated with the New gTLD Program*, March 21, 2011, at page 3.

<sup>4</sup>*Preliminary Report of Dennis Carlton Regarding Impact of New gTLDs on Consumer Welfare*, March 2009, at pages 2–3, available at <http://www.icann.org/en/topics/new-gtlds/prelim-report-consumer-welfare-04mar09-en.pdf>.

<sup>5</sup>Katz had also served as the chief economist of the Justice Department's Antitrust Division.

<sup>6</sup>Michael L. Katz, Gregory L. Rosston and Theresa Sullivan, *Reply to Comments on An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names*, February 21, 2011, at page 3 (emphasis added), available at <http://www.icann.org/en/topics/new-gtlds/analysis-response-phase-ii-report-21feb11-en.pdf>.

<sup>7</sup>*Id.* at page 4 (emphasis added).

conomic analysis will prove to be any more informative in that regard than those that have already been conducted.<sup>8</sup>

The Carlton and Katz-Rosston reports reflect almost no actual investigation of the practical effects of the huge expansion of gTLDs that ICANN plans. It is an axiom of competition analysis that any such analysis must rest on a factual background. Moreover, these reports do nothing to demonstrate that general principles that apply in many markets actually apply to the unique nature of gTLDs and the scale of ICANN's planned increase in their number. A new gTLD is not a product in the sense that a new electric car is a product.

Domain names like *NYTimes.com* are essentially trademarks. They are small fragments of text that consumers associate with the products and services of businesses and organizations on the Internet. By convention, Internet domain names ("trademarks") have two parts separated by a period. On the left is a brief version of a product or business name and on the right is the gTLD (or non-generic TLDs such as country codes that are not at issue today).

From the perspective of the consumer, a second-level domain, such as *NYTimes*, connected to a given gTLD, such as *.com*, is essentially the same as *NYTimes.info* or *NYTimes.biz*. Competition based on differentiation of only the gTLD is expressly prohibited by trademark law and by the rules of ICANN, which has procedures that can lead to cancellation of such registrations by a non-owner of the left side of a domain name, but only after the owner successfully brings a legal action against the registrant of the infringing domain name. This key, undisputed principle of the Internet—essential to its usefulness to Internet users—refutes the simplistic Carlton claim that adding gTLDs, *ipso facto*, increases competition, improves product variety and provides more choice to consumers.

As the ICANN economists noted, the gTLDs added by ICANN in the last decade have attracted relatively few registrations, and the overwhelming majority of these merely duplicate second-level domain names already registered under *.com*. They add little or nothing to the benefits that brand owners and consumer achieve from the Internet. Today, many Internet users find desired websites by running searches on Bing, Google, or other search engines. They don't type in *NYTimes.com*, they just type in "NYTimes", or "New York Times" or "NY times" or even just "times" (try it—on Google, *NYTimes.com* is the second search result for a search on "times"). It adds absolutely nothing if the search engine then offers them a choice between *NYTimes.com* and *NYTimes.biz*.

An analogy to printed brand names may be useful in explaining why the extreme proliferation of gTLDs is contrary to the interests of Internet users. Under existing trademark law, a registration of a brand name, say "Tide", also protects the name in other type fonts, such as "Tide" and "Tide" and "TIDE" and "Tide". The differences in type fonts are analogous to the gTLD name after the dot in a domain name. They are differentiating markers that do not alter the sense of the brand name and mean almost nothing to the consumer.

The addition of gTLDs is as if a company other than Procter & Gamble could register "Tide" as a trademark and use it until Procter & Gamble discovered the misuse and filed a legal proceeding against it. Under ICANN's plan to expand the number of gTLDs, Procter & Gamble would either need to preempt such misuse by paying to register "Tide" defensively under these new gTLDs, or it could elect to spend the time and resources needed to detect such registrations after the fact and then incur the expense of dealing with them individually as they are discovered. And even this assumes that it is possible to determine ultimately who the registrant is, something that is not always possible with the *Who-Is* databases available today.

Of course, it is true, as ICANN has said, that both trademark law and ICANN's procedures for dealing with cybersquatting would be available to domain-name registrants. But the proliferation of gTLDs would raise the monitoring costs of domain-name owners. ICANN has acknowledged that such proliferation would raise costs, but nevertheless maintains—without any quantification of either costs or user benefits—that the benefits would exceed these costs.

In fact, the benefits, as we have demonstrated above, are negligible. The costs are not. Of course, the proliferation of gTLDs will create profit opportunities for companies that offer domain name registration and consulting services as they process defensive registrations under the additional gTLDs. The revenue these companies will derive from either defensive or infringing domain registrations—and the motivation behind these registrations would appear to be a matter of indifference to such companies—is a cost to legitimate domain-name owners.

<sup>8</sup>ICANN *Rationale* at page 1.

Our analysis to date shows that an unlimited expansion of gTLDs would not add anything material to the product variety facing Internet users. It would merely create a costly nuisance for those users. ICANN is sponsoring a perversion of the economic analyses that it commissioned by even suggesting that this nuisance has net benefits for the Internet community. We therefore urge you to take action to block the unlimited expansion of gTLDs unless it is satisfactorily and transparently demonstrated that any such expansion—or a limited expansion on a case-by-case basis—would be in the public interest and that the benefits to any expansion would exceed the clear costs that the expansion would impose on the global multi-stakeholder community that ICANN serves.

Respectfully submitted,

ROBERT E. HALL  
MICHAEL A. FLYNN

cc: Lawrence E. Strickling, Assistant Secretary for Communications and Information and Administrator, National Telecommunications and Information Administration, U.S. Department of Commerce

Fiona Alexander, Associate Administrator, National Telecommunications and Information Administration, U.S. Department of Commerce

Vernita Harris, Deputy Associate Administrator of the Office of International Affairs, National Telecommunications and Information Administration, U.S. Department of Commerce

Suzanne Murray Radell, Senior Policy Advisor, National Telecommunications and Information Administration, U.S. Department of Commerce

Elizabeth Bacon, Telecommunications Policy Specialist, National Telecommunications and Information Administration, U.S. Department of Commerce

Cameron F. Kerry, General Counsel, U.S. Department of Commerce

John D. Rockefeller IV, Chairman, Committee on Commerce, Science and Transportation, U.S. Senate

Kay Bailey Hutchison, Ranking Member, Committee on Commerce, Science and Transportation, U.S. Senate

Amy Klobuchar, Chair, Subcommittee on Competitiveness, Innovation and Export Promotion, Committee on Commerce, Science and Transportation, U.S. Senate

Daniel K. Inouye, Chairman, Committee on Appropriations, U.S. Senate

Thad Cochran, Ranking Member, Committee on Appropriations, U.S. Senate

Patrick J. Leahy, Chairman, Committee on the Judiciary, U.S. Senate

Charles E. Grassley, Ranking Member, Committee on the Judiciary, U.S. Senate

Barbara Mikulski, Chair, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. Senate

Al Franken, Chairman, Subcommittee on Privacy, Technology and the Law, Committee on the Judiciary, U.S. Senate

Tom Coburn, Ranking Member, Subcommittee on Privacy, Technology and the Law, Committee on the Judiciary, U.S. Senate

Ron Wyden, Chairman, Subcommittee on International Trade, Customs, and Global Competitiveness, Committee on Finance, U.S. Senate

Harold Rogers, Chairman, Committee on Appropriations, U.S. House of Representatives

Fred Upton, Chairman, Committee on Energy and Commerce, U.S. House of Representatives

Henry A. Waxman, Ranking Member, Committee on Energy and Commerce, U.S. House of Representatives

Greg Walden, Chairman, Subcommittee on Communications and Technology, and Technology, Committee on Energy and Commerce, U.S. House of Representatives

Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology, Committee on Energy and Commerce, U.S. House of Representatives

Lamar Smith, Chairman, Committee on the Judiciary, U.S. House of Representatives

Norm Dicks, Ranking Member, Committee on Appropriations, U.S. House of Representatives

John Conyers, Ranking Member, Committee on the Judiciary, U.S. House of Representatives

Bob Goodlatte, Chairman, Subcommittee on Intellectual Property, Competition and the Internet, Committee on the Judiciary, U.S. House of Representatives

Frank Wolf, Chairman, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. House of Representatives

Mel Watt, Ranking Member, Subcommittee on Intellectual Property, Competition and the Internet, Committee on the Judiciary, U.S. House of Representatives

Chaka Fattah, Ranking Member, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. House of Representatives

#### **Robert E. Hall**

Robert E. Hall is the Robert and Carole McNeil Joint Professor of Economics at Stanford University and Senior Fellow at Stanford's Hoover Institution. He served as President of the American Economic Association for the year 2010, served earlier as the Association's Vice President and Ely Lecturer, and is now a Distinguished Fellow of the Association. He is an elected member of the National Academy of Sciences and Fellow of the American Academy of Arts and Sciences, the Society of Labor Economists, and the Econometric Society, the professional organization of economists specializing in measurement issues. He is Director of the Research Program on Economic Fluctuations and Growth of the National Bureau of Economic Research. He was a member of the National Presidential Advisory Committee on Productivity. For further information about his academic activities, see [Stanford.edu/~rehall](http://Stanford.edu/~rehall). He received his Ph.D. in economics from MIT and his BA from the University of California, Berkeley.

Professor Hall is co-author of the college textbook *Economics: Principles and Applications*, now in its fifth edition, and author or co-author of numerous articles in the *American Economic Review*, the *Journal of Political Economy*, and other academic journals.

Professor Hall has advised a number of government agencies on national economic policy, including the Treasury Department, the Federal Reserve Board, and the Justice Department, and has testified on numerous occasions before congressional committees.

#### **Michael A. Flynn**

Mr. Flynn is a consulting and testifying expert economist, specializing in anti-trust, economic damages, intellectual property and other complex business litigation and consulting engagements. He has extensive case experience in a broad range of industries, markets and products. Mr. Flynn studied in the PhD Program in Economics of the Massachusetts Institute of Technology, Cambridge, Massachusetts, from 1971 to 1974, where he was a National Science Foundation Fellow. He completed his general and field examinations for the PhD degree in 1974. Mr. Flynn was awarded his AB degree from the University of California, Berkeley, where he was the 1971 recipient of the Department of Economics Citation as the Outstanding Graduating Senior.

Mr. JAFFE. I'd like to add just one point. It seems to me incredible that they are suggesting that the failure of their earlier proposals where they did a beauty contest, where they tried to select what they thought were going to be the most economically viable programs, and that they failed, then argues for us blowing open the doors, while we still do not have the protections that we need to fight against some of these cybercrimes, and say that this will then be looked at after we find whatever damage has been caused.

Senator KLOBUCHAR. Ms. Alexander, can the Secretary of Commerce stop ICANN from doing this?

Ms. ALEXANDER. Thank you very much.

Senator KLOBUCHAR. That's what this quote was.

Ms. ALEXANDER. Thank you very much, Senator. I haven't seen the letter if it arrived last night.

I think the role of the Department of Commerce is not to substitute our judgment for ICANN's. We've tried to very actively participate in the process. I think it's important to understand,

though, too, while the application window starts in January and closes in April, then there's going to be a processing of the applications. We've read the applicant guidebook and we've mapped out eight or nine different scenarios of the paths an application could take.

An application with no problems and no objections will still take 9 months to process. So the earliest any new TLD will actually be operational on the root will be January of 2013.

Senator KLOBUCHAR. Yes, but you're having people put in \$185,000 and at least spend all this money on applications. Are you implying like we'd stop in the middle, that you'd stop in the middle?

Ms. WILLIAMS. I think there's going to be—there's going to be a natural evolutionary, slow introduction of them anyway. And while ICANN has committed to do a review of their program with the GAC, they're also required under agreement with the Department of Commerce to do a review of the entire program a year after the first TLD's in the root. So there will be this process where we can have checks and balances to make sure.

We obviously take very seriously the concerns expressed by Mr. Jaffe and others.

Senator KLOBUCHAR. Also, the other thing we've heard is the FTC Chairman and others as well. So I'm just trying to figure out if this gets started, I'm not sure you're going to be able to stop it in the middle. Maybe you can.

Ms. WILLIAMS. Mr. Leibowitz's comments yesterday are very consistent with the comments we've been raising inside the GAC. In fact, Mr. Leibowitz's staff is very much involved with us in the process. That's in fact why many of the changes were made to the ICANN program.

I think what we're looking at really is effective implementation and monitoring of this effort, and we think it's wholly appropriate for Mr. Leibowitz going forward to make sure that ICANN lives up to these things to protect consumers. For our part, that's what we'll be doing, working with consumers and law enforcement to make that happen.

Senator KLOBUCHAR. My original question, though, was about this, this way of rolling it out slowly. Ms. Dyson, did you want to answer that?

Ms. DYSON. Sure. As the founding chairman of this organization, I'm extremely disappointed in its inability to do what we set out to do, which was to have a clean and open and transparent market for a limited, valid set of domain names. The slow-rolling expansion, as Mr. Jaffe just said, showed it wasn't working, and I don't think it's going to work better whether we do it fast or slow.

The problem is, you've heard Mr. Pritz describe all these elegant processes and all these policies, but they haven't resulted in a clean and open market and I don't see why anything different is going to happen if we have more such TLDs.

And I want to address one other issue, which is the talk about innovation, that we need more domain names to innovate. I'm in the venture capital community. There's huge amounts of innovation. There are new name spaces. *Twitter.com* has a new name space. Federal Express has a name space of packages IDs. Amazon

has a name space for books. You don't need to pervert the domain name system, which is an artificially scarce resource controlled by ICANN, in order to innovate elsewhere. People like Twitter and Amazon earn those rights through value creation. This is what I like to see: real innovation, where you don't buy a name for \$200,000 and then spend a few millions defending it, where you actually create something new. And for that you don't need a new TLD.

Senator KLOBUCHAR. Mr. Pritz, obviously a lot of people, we're on the Commerce Committee, we like innovation. But I'm just trying to figure out. Clearly, there are many that are concerned in the nonprofit community about the cost of this, as Ms. Williams has articulated. And we've also heard from businesses that are concerned. Who's really pushing for this? Is there division in the nonprofit community? Is there division in the business community? Is it people who are focused on a free and open Internet, which we all are up here?

I just want to—I want to understand the motivation. Who are the groups pushing for this?

Mr. PRITZ. A point I wanted to make at the end and I missed making earlier is, in our testimony when we talk about a consensus-based process and that there's a consensus for launching this program in this manner, those consensus opinions are hard-fought and hard-won. ICANN is a very noisy environment and it's all those groups you mentioned—IT attorneys, corporations, not-for-profits, noncommercial—

Senator KLOBUCHAR. They have said they want to expand to over a thousand? I'm just trying to understand how we got where we are, because obviously Congress, for a change, didn't get us exactly here. And I want to know how we got where we are and who's been pushing it, because it didn't come through the political process so I'm somewhat naive about how you got where you are.

Mr. PRITZ. So it came through the ICANN political process.

Senator KLOBUCHAR. Yes.

Mr. PRITZ. But that policymaking body, it's a bottom-up policymaking process. That policymaking body has representatives that are appointed by all those stakeholder groups or constituency groups. I could list them: IP, business, noncommercial, not-for-profit, Internet service providers, registries and registrars. Each one of those stakeholder groups appoint representatives to those policymaking bodies, where in this particular instance they undertook this formal bylaw-regulated policymaking process, and over a period of 19 months developed, ironically, 19 policy recommendations.

The most highly debated one was the answer to the first question: Should there be new TLDs and, if so, how should they be restricted? What you see in front of you is the opinion to restrict them by rounds, set a high bar, make sure they have the wherewithal. Those policymakers have discussions at ICANN meetings and in teleconferences that occur once a month, and then they go back to their constituency groups and meet with them and bring back opinions.

You know, many of the corporations that we're talking about today, they're also represented in those policymaking bodies and took part in this.

Senator KLOBUCHAR. And how about the non-profits and groups that are very focused on a free and open Internet?

Mr. PRITZ. The not-for-profit constituency group that we're really pleased to have and have some of the most dynamic people in ICANN is new, but the noncommercial constituency is very much for an open Internet and for the introduction of new gTLDs. In fact, the sole dissenting voice in the final consensus opinion was from the noncommercial that said it's not open enough, we're being too restrictive with our limitations and protection of rights of others.

So really it was a broad-based, hard-fought battle, if you can imagine, by a very noisy group of stakeholders that are—anybody can come to the microphone at an ICANN meeting and talk directly to the Chair, and the Chair sits there and responds in a dignified way.

Senator KLOBUCHAR. I think sometimes what happens, just from judging what happens around here, everyone works on it in a room, people do come, and then all of a sudden they get the final product and then everyone steps back and looks at it a little bit. That's probably what you're hearing today from the Senators up here, who have been really exposed to this outcome for the first time, and what you'll probably hear in the weeks to come from some of the groups, is my prediction, and the public, and I think there's going to be an additional hearing as well.

So I just hope, given that I think there's issues about what the Congress or anyone could do about your group, which has been set up to do this to begin with, but I'm hopeful that you will listen to these concerns as we move forward. Will you? Will you listen to the concerns as we go forward?

Mr. PRITZ. I certainly will. And I want to tell you how passionate everyone is at ICANN, and when I talk about ICANN it's the big ICANN with all its stakeholders, are concerned about this issue and have worked very hard on it.

Senator KLOBUCHAR. OK.

Ms. Williams.

Ms. WILLIAMS. Senator, I just wanted to point out that, to ICANN's credit, they did recognize that the not-for-profit arena's voice had not been heard. But we weren't officially recognized until June of this year. June of this year, the train had already left the station, and there are several iterations of the applicant guide and we weren't allowed to be able to contribute to having the not-for-profit world recognized, the issues around cost, the issues around defensive registrations.

In fact, if you take a look at what ICANN has put forward in terms of being able to protect one's brand, there are still—it's still fuzzy. There are still some incredible gaps. There are still opportunities for cybersquatters to come in that have the funds to be able to take the venerable names of not-for-profits, and we will be stuck.

For example, if—there is a rapid takedown process that ICANN has discussed. If someone comes in and takes a dot-ymca something, that can be taken down and then it sits dormant. But then it goes back out into the public for purchase again by another cybersquatter. So it doesn't even allow nonprofits to reserve their name and not have someone come in and take it.

I can't tell you what the specific answer is, but there has to be something done on behalf of our sector to protect us. We do not have the funds to be able to do this.

Senator KLOBUCHAR. OK. I'm going to—OK, the last two comments here briefly and then we're going to conclude.

Ms. DYSON. Just finally, in all this process the end-users, the billions of people, not the thousands and millions of companies, but the billions of end-users who stand to gain nothing from being confused, haven't been heard.

Senator KLOBUCHAR. Thank you. I think that's the beginning of this process.

Mr. PRITZ. Right.

Senator KLOBUCHAR. All right.

Mr. PRITZ. What is required of ICANN under its affirmation of commitments is a consensus. What you're hearing here is that a very, very broad representation of the business community and the international business community is concerned. You've just heard that the not-for-profits are concerned. They have stated that they have talked to all sorts of groups. I'd just like to quote one more thing into the record to show that this is—and it is short, Senator, I understand the time circumstance—but to show that there is not the consensus, there is no consensus behind this proposal, which is a radical proposal.

This is from the IRT, which deals with the trademark issues, and they were asked to look into this issue, which was a good thing. But they wanted to make very clear with the report: "Was it because we support the concept of the expansion of the gTLD space unreservedly? Hardly. The views of the IRT reflect the views of business and trademark interests in general. A sizable number"—let me emphasize that—"A sizable number of our team would have preferred status quo, with no new gTLDs, until better rights protection mechanisms are in place for the existing gTLDs. Others favored the measured"—what you were talking about—"measured introduction of sponsored or community-based gTLDs."

And then they said: "Some support the current expansion, seeing the advantages for commerce and the consumer for open competition and innovation."

That is not consensus. ICANN then decides among all these different groups who have different views who wins, and guess who always wins? It is always the group that wants expansion. That is what drives the whole system. That's what the registrars and registries get almost all of their money from. That's where almost all the money for ICANN comes from.

So we think there's a very strong bias to always expand and always say the consensus is here. We don't see any consensus of the community.

Thank you very much.

Senator KLOBUCHAR. All right. Well, this has been an incredibly good discussion. I want to thank you all for being here. I have to say, I raised this issue this morning with my attendees at my Minnesota breakfast that we have every Thursday. I thought I'd get something of a yawn, but actually some of them showed up at the hearing, and then also a number of them came up to me and asked questions, making me think that the public actually would be inter-

ested in this issue, and I think it's something that they understand.

We all know that the Internet is one of the great American success stories. Its beginnings can be traced to a program at the U.S. Department of Defense. In only a few short decades the network of networks has expanded in leaps and bounds, reaching people around the globe. The Internet has transformed not only how we communicate with friends and family, but also the way companies do business, how consumers buy goods and services, how we educate our children. It's a powerful engine for economic growth and a great democratic tool that citizens everywhere are using to empower their communities.

And I believe the job of ICANN and the job of the administration, the job of this Congress, is to make sure that we protect that Internet so it can be used by all.

So I want to thank you so much. We look forward to working with you. We may have some follow up questions in writing to follow up on some of the answers that we got today, so we will leave the record open for a week. Thank you.

This hearing is adjourned.

[Whereupon, at 12:10 p.m., the hearing was adjourned.]

## A P P E N D I X

### RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO FIONA ALEXANDER

*Question 1.* Ms. Alexander, one of the purposes for DNSSEC is to ensure that the recipient can validate that the data from any domain name comes from the owner of that name and that it arrived at its destination unchanged from end-to-end. The recipient should be assured he or she is going to Internet site they are seeking to go to and not being re-directed to another site.

There is legislation reported out of the Judiciary Committee called the PROTECT IP Act that requires the use of filtering to re-direct end users who want to reach blacklisted Internet sites that are “dedicated to infringing activity” to a site that includes a statement by Department of Justice that the site was determined to be dedicated to infringing activity plus pointers to some to be determined information and resources.

Does the Administration have a position on whether it believes that the re-direction required under the PROTECT IP Act as reported by the Senate Judiciary Committee is incompatible with how DNS SEC is currently designed to authenticate domain names?

Answer. The Administration believes that online piracy by foreign websites is a serious problem that requires a serious legislative response, but will not support legislation that reduces freedom of expression, increases cybersecurity risk, or undermines the dynamic, innovative global Internet. Legislation must avoid creating new cybersecurity risks or disrupting the underlying architecture of the Internet. In addition, proposed laws must not tamper with the technical architecture of the Internet through manipulation of the Domain Name System (DNS), a foundation of Internet security. The Administration’s analysis of the DNS filtering provisions in some proposed legislation suggests that they pose a real risk to cybersecurity and yet leave contraband goods and services accessible online. Legislation must avoid driving users to dangerous, unreliable DNS servers and puts next-generation security policies, such as the deployment of DNSSEC, at risk.

*Question 2.* Given that many of the expected hundred of new domains created will be owned and operated by non-domestic entities, does the Administration believe that PROTECT IP Act as reported by the Senate Judiciary Committee will be effective in stopping non-domestic Internet sites dedicated to infringing activities?

Answer. Please see response to Question 1.

*Question 3.* Does the Administration have a position on whether it believes that PROTECT IP as reported by the Senate Judiciary Committee will strengthen, weaken, or have no change on efforts to make the DNS more secure for consumers and business?

Answer. Please see response to Question 1.

*Question 4.* What is the status of DNS SEC implementation for the Federal government?

Answer. The Department of Commerce’s long-running effort to support the deployment of DNSSEC has included NTIA’s work with ICANN and VeriSign in signing the authoritative root zone file which has facilitated broader DNSSEC deployment. The Federal Information Security Management Act (FISMA) guidelines require all Federal agencies to deploy DNSSEC. The Department of Commerce’s National Institute of Standards and Technology (NIST) and the Department of Homeland Security (DHS) regularly measure DNSSEC deployment within the Executive Branch of the Federal government and their compliance with FISMA. According to their data, 35 agencies have fully implemented DNSSEC and 23 agencies have partially implemented. Fifty-one agencies are not yet compliant. The Department is currently 78 percent compliant with FISMA requirements and is working towards full compliance.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO  
FIONA ALEXANDER

*United Nations Model*

*Question 1.* There has been a growing contingency of other countries critical of the ICANN multi-stakeholder model and about the U.S.' involvement and influence with ICANN. Some governments, not necessarily friendly to the U.S., are seeking to increase their power over the Internet and its governance.

Russia and China (with Tajikistan and Uzbekistan) have proposed to the United Nations an Internet "Code of Conduct," to which a senior State Department official stated "they seek to justify the establishment of sovereign government control over Internet resources and over freedom of expression in order to maintain the security of their state."<sup>1</sup> Even Russian Prime Minister Vladimir Putin remarked recently his desire of "establishing international control over the Internet using the monitoring and supervisory capabilities of the International Telecommunication Union (ITU)."<sup>2</sup>

The other proposal by India, Brazil, and South Africa calls for the creation of a new body within the United Nations to oversee Internet policy. As a result, ICANN as well as the Internet Governance Forum (IGF) could be significantly marginalized or hijacked by this new UN entity.

These proposals seem to be in direct conflict with our Nation's effort to privatize the Internet through transferring the authority of the DNS to the private sector and for the Internet governance model to be private-sector led.

If the U.S. Government followed the advice to unilaterally delay the gTLD expansion, what do you believe the impact would be globally and do you believe this would fan the flames of anti-U.S. government sentiment with respect to Internet governance? Could it give more momentum to other governments' calls to have the United Nations assert oversight over ICANN or replace it altogether?

Answer. NTIA recognizes that the new gTLD program is the product of a six-year, international multistakeholder process and has no intention of interfering with the decisions and compromises reached during that process. Doing so would provide ammunition to those governments seeking to exert top-down, government-led control over the Internet, which NTIA believes is inimical to the future growth of the Internet.

*Question 2.* If the U.N. did take control or governments had greater involvement, what impact would that have on American businesses and citizens that utilize the Internet? What impact could it have on Freedom of Speech?

Answer. It is NTIA's view that the Internet we enjoy today—a major engine of economic growth and innovation—did not develop by happenstance. It emerged as the result of the hard work of multistakeholder organizations such as the Internet Society, the Internet Engineering Task Force, and the World Wide Web Consortium. The United States is opposed to establishing a governance structure for the Internet that would be managed and controlled by nation-states. Such a structure could lead to the imposition of heavy-handed and economically misguided regulation and the loss of flexibility the current system allows today, all of which would jeopardize the growth, innovation and freedom of expression on the Internet we have enjoyed these past years.

*Growth of the Internet and Expansion of the Domain Name System*

*Question 3.* The Internet has been so amazingly beneficial to small businesses because it allows them to globally expand their local markets and enables them to compete with Fortune 100 companies because the size of the computer screen is the same for a small business in Bangor as it is for a multi-national corporation like Wall-mart. Small businesses are the anchor to not only Maine's economy but to our Nation's and the Internet has been invaluable to them.

Supporters of the expansion have stated it will bring new competition and choice to the Internet space and allow the Internet to continue to grow in the number of websites, content, applications, and online services. It also presents businesses new models to harness the boundless benefits of the Internet.

There have already been expansions to top level domains in the past to accommodate for the growth of the Internet, with the intro of gTLDs like .biz, .info, .museum, .mobi, etc.

If the Internet is going to continue to grow, shouldn't the domain name system? Answer. The goal to establish new gTLDs beyond the original seven (.com, .edu, .gov, .int, .mil, .net, and .org) began over a decade ago when ICANN was charged in 1998 by the Department of Commerce with promoting competition in the registra-

<sup>1</sup> [http://www.huffingtonpost.com/2011/09/27/russia-china-internet-control\\_n\\_984223.html](http://www.huffingtonpost.com/2011/09/27/russia-china-internet-control_n_984223.html).

<sup>2</sup> <http://premier.gov.ru/eng/events/news/15601/>.

tion of domain names. The current round of expansion of the gTLD space is a continuation of that effort.

*White Paper*

*Question 4.* In the “White Paper,” which was released in 1998 and led to the formation of ICANN is competition, has as one of its core principles is competition—that competition and consumer choice should drive the management of the Internet because they will lower costs, promote innovation, encourage diversity, and enhance user choice and satisfaction.

Comments in the White Paper<sup>3</sup> on the issue of new generic top level domains showed “very strong support for limiting government involvement during the transition period on the matter of adding new gTLDs. Specifically, most commenters—both U.S. and non-U.S.—suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running.” Also, commenters noted that “there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution.”

Isn’t the expansion of gTLD a form of competition, where .hotels or .cars could compete against .com or .biz? If not, why?

Answer. As NTIA noted in our testimony, the development and deployment of the new gTLD program is consistent with ICANN’s agreement to promote competition in the gTLD environment as outlined in the Affirmation of Commitments. In addition, the current round of expansion of the gTLD space is expected to provide a platform for city, geographic, and internationalized domain names, among other things. We expect this type of change to the DNS to enhance consumer trust and choice, and reinforce the global nature of the Internet. It is also expected that a portion of applications will be either generic words or brand-focused as part of business development, investment, and startup plans.

Some companies, however, have expressed concern that ICANN’s process for expanding gTLDs may lead to the filing of defensive registrations. On December 21, 2011, Administrator Strickling and other Department of Commerce leadership met with various stakeholders to hear these concerns and, on January 3, 2012, Administrator Strickling sent a letter to ICANN’s Chairman of the Board, Stephen Crocker, raising this and other issues. NTIA will continue to monitor stakeholder concerns and raise issues as appropriate. A copy of his letter is attached.

*Question 5.* Several commenters also stated “the market will decide which TLDs succeed and which do not.” What is wrong with allowing the market to continue to decide with new gTLDs from the expansion?

Answer. NTIA agrees that the market will be a key determinant in the success of new gTLDs and continues to be an active participant in the multistakeholder process related to the gTLD program.

*Question 6.* If commenters are correct that “there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution” then why should we place “artificial or arbitrary” limits on the Internet?

Answer. In NTIA’s recent discussions with stakeholders, it has become clear that many organizations, particularly trademark owners, believe they need to file defensive applications at the top level. It appears that this possibility might not have been fully appreciated during the multistakeholder process on the belief that the cost and difficulty of operating a top-level registry would constrain companies from filing defensive registrations. NTIA believes that it would not be healthy for the expansion program if a large number of companies file defensive top-level applications when they have no interest in operating a registry. Accordingly, NTIA suggested in a January 3, 2012, letter to ICANN that it consider taking measures to mitigate against this possibility.

In addition, NTIA’s letter cited an immediate need to improve communication with stakeholders and potential new gTLD applicants prior to the launch of the program. NTIA also advocated that following the application period, ICANN use the data that will then be available to examine the potential scope of the program and consider if there is a need for a phased implementation of new gTLDs. Using that data, ICANN can also explore the possibility of implementing additional protections by new TLD operators at the second-level. In addition to addressing these program-specific concerns, NTIA also reiterated the importance of implementing a stronger registrar accreditation agreement; improving current WHOIS policy; and dedicating

<sup>3</sup> <http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses>.

resources to fully staff and equip the contract compliance department, including creating a centralized and automated complaint process. A copy of the January 3, 2012, letter to ICANN is enclosed.

ICANN has now taken steps to enhance its outreach in the United States, including holding an information session on January 11, 2012, in Washington, D.C. In addition, NTIA was encouraged by ICANN's January 11, 2012, written response in which ICANN commits to review possible improvements to the program, specifically to deal with the perceived need for defensive registrations at the top-level, as well as to complete a series of work streams that will facilitate more effective tools for law enforcement and consumer protection. As is necessary in a multistakeholder process, all of these efforts will require active engagement by all parties prior to adoption.

*Expansion of Internet Addresses*

*Question 7.* The Internet has revolutionized some many different areas of society and the economy. The innovation, adoption, and sheer size of the Internet are simply unparalleled. The Internet currently comprises of approximately 2 billion users and more than five billion devices. Cisco estimates there will be more than 50 billion Internet connected devices by 2020.

However, we have for the most part exhausted the existing pool of Internet address—IPv4 provides for approximately 4.3 billion addresses. The shortage has been the driving factor in creating and adopting several new technologies as well as new and larger addressing system, known as IP version 6. This migration from a 32-bit addressing space to a 128-bit addressing, will provide 340 trillion, trillion, trillion separate addresses—enough for every human bring to use many trillions of address. With IPv6, there will be approximately 670,000 IP addresses for every squared nanometer of the earth's service. To put that into perspective, a human hair is 100,000 nanometers wide.

However, the implementation of IPv6 has been somewhat slow. Last year, I read only about 20 percent of the Internet was IPv6 compatible and while a recent survey shows adoption of IPv6 grew by 1,900 percent over the past 12 months that results in only about 25 percent of .com, .net, and .org Internet subdomains.

What is the status of the migration to IPv6 and what will it mean for Internet users and businesses, domestic and globally?

Answer. Stakeholders are in varying stages of IPv6 deployment depending on individual budgets, technological coordination, and management. The Office of Management and Budget (OMB) has established IPv6 transition deadlines for U.S. agencies, and the National Institute for Standards and Technology (NIST) has begun tracking Federal agency deployment. A set of industry-wide metrics related to IPv6 deployment is lacking, however. This is one of the topics NTIA plans to address in a multistakeholder workshop planned for the first quarter of 2012. For Internet users, IPv6 will enable innovative new technologies and allow the Internet to continue to grow and expand. IPv6 is increasingly being integrated into equipment and services. There are some computer operating systems that already include IPv6 and use IPv6 automatically if it is available. Applications will follow as demand increases. For domestic businesses, operational costs (*e.g.*, staff training, administrative costs) may constitute additional costs outside of normal equipment refresh cycles.

*Question 8.* Is there anything governments can do to encourage faster adoption of IPv6 as well as increase awareness to businesses and citizens about the migration?

Answer. Government can continue to increase awareness about the need to adopt IPv6 by convening public workshops and conducting outreach. Government as a user can ensure that IPv6 is integrated and deployed in its own networks through better coordination of its acquisition and procurement activities across management, legal, policy, and technical teams.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BARBARA BOXER TO  
KURT PRITZ

*Question 1.* Intellectual property rights holders have expressed some concerns about the possibility of ICANN granting generic top-level domain names (gTLDs) that could lead to consumer confusion, or violations of trademark or other intellectual property rights. Could you describe, in detail, the pre-grant procedures by which ICANN will act to prevent gTLDs that could cause consumer confusion and/or violation of intellectual property rights?

Answer. The New gTLD Program contains a suite of new, mandatory intellectual property rights protection mechanisms, both at the first level (for the top-level domains, or names to the right of the dot such as .org) and at the second level (second-level domains, like icann.org). The first level protections mitigate against applications for and the approval of new TLDs that may infringe on the legal rights of others or cause consumer confusion.

First, there is a high bar to participation in the Program. The \$185,000 evaluation fee itself is a bar to potential wrongdoing at the top-level.<sup>1</sup> 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.

Second, the stringent reviews include measures specifically targeted to identify—and reject—applicants that are bad actors or have already demonstrated a history of cybersquatting. ICANN requires 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). In addition, ICANN will reject 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.

Third, the Program offers public review of the applied-for strings and the opportunity to state an objection to any string. After the April 12, 2012 close of the application window, ICANN will publish a list of all applied-for gTLDs. (That publication will occur around May 1, 2012.) At that time, entities, individuals and governments can review the list of strings and consider if they wish to object to any individual application. In addition, the New gTLD Program allows ICANN's Governmental Advisory Committee, comprised of representatives of over 120 governments, to inform ICANN that there are concerns with an application—concerns that may include issues of consumer confusion or harm. If the Governmental Advisory Committee provides consensus advice to the Board not to approve and application, that advice creates a presumption in favor of denying the application.

There are four formal objection processes that can be initiated by the public, each administered by a well-known international dispute resolution service provider. Types of objections that can be lodged are:

- String Confusion Objection—The applied-for gTLD string is confusingly similar to an existing TLD or to another applied for gTLD string in the same round of applications.
- Legal Rights Objection—The applied-for gTLD string infringes the existing legal rights of the objector.
- Limited Public Interest Objection—The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.
- Community Objection—There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

To avoid frivolous objections, parties must have standing to object. For example, legal rights objectors must be the right holder or intergovernmental organization whose rights are being infringed.

Objections lead to independent dispute resolution proceedings. Parties are the objector and the gTLD applicant.

- The International Centre for Dispute Resolution has agreed to administer disputes brought pursuant to string confusion objections.
- The Arbitration and Mediation Center of the World Intellectual Property Organization has agreed to administer disputes brought pursuant to legal rights objections.
- The International Center of Expertise of the International Chamber of Commerce has agreed to administer disputes brought pursuant to Limited Public Interest and Community Objections.

Standards of review for each of the objections have been carefully crafted through reviews by intellectual property holders and the Internet community. For example, in the case of rights infringement objections, "Strings" must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted

<sup>1</sup>The fee was calculated based on a cost recovery model but the amount has the side benefit of deterring frivolous or malicious applications.

and internationally recognized principles of law. A Dispute Resolution Service Provider panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector's registered or unregistered trademark or service mark ("mark") or IGO name or acronym (as identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector's mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector's mark or IGO name or acronym.

In the case where the objection is based on trademark rights, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector's existing mark.
2. Whether the objector's acquisition and use of rights in the mark has been bona fide.
3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the objector, of the applicant or of a third party.
4. Applicant's intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector's mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.
5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.
6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use.
7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.
8. Whether the applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

For a complete description of the standards and rules for the objection and dispute resolution processes, see Module 3 of the Applicant Guidebook, <http://newgtlds.icann.org/en/applicants/agb/objection-procedures-11jan12-en.pdf>.

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.

As noted at the Subcommittee hearing, 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 already 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.

*Question 2.* It is my understanding that in previous expansions of domain names, ICANN has allowed a "sunrise" period, prior to considering applications, in order to allow rights holders to submit information regarding their protected names and uses. The "sunrise" submissions by rights holders could act as a resource for ICANN to help prevent consumer confusion and/or intellectual property rights violations. Does ICANN plan to allow "sunrise" submissions by rights holders, and if not, why?

Answer. Yes, a “sunrise” period is mandated for each new TLD approved under the New gTLD Program.

ICANN is in the process of selecting providers for a Trademark Clearinghouse, a central repository for information to be authenticated, stored, and disseminated pertaining to the rights of trademark holders. Trademark holders will have the opportunity to record (i) Nationally or multi-nationally registered word marks from all jurisdictions; (ii) Any word mark that has been validated through a court of law or other judicial proceeding; (iii) Any word mark protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion; and (iv) other marks that constitute intellectual property, all subject to the specific criteria of the Clearinghouse.

The authenticated rights data in the Trademark Clearinghouse will be used to support pre-launch Sunrise and Trademark Claims services. All new gTLD registries will be required to use the Trademark Clearinghouse to support the required pre-launch and initial launch period rights protection mechanisms that must include, at minimum, a Trademark Claims service and a Sunrise process.

The Trademark Clearinghouse is expected to create efficiencies and for trademark holders. Instead of requiring trademark holders to authenticate mark information for each separate new registry, the authentication and validation processes can be completed once through submission to the Trademark Clearinghouse.

Through the Sunrise process, trademark holders will have the opportunity to register desired second-level domain names before a new gTLD opens for general registration. Rights holders who have recorded their data in the Trademark Clearinghouse will receive notice if a third party registers a domain name matching the Clearinghouse record during the sunrise period.

After the gTLD is accepting general registrations, ICANN requires that each new TLD offer a Trademark Claims service to provide real-time notices to prospective registrants where a domain name matches a Clearinghouse record, and provide notice to trademark holders in cases where domain names matching a Clearinghouse record are registered. Information on the additional intellectual property protections required under the New gTLD Program is detailed in my written testimony.<sup>2</sup>

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
KURT PRITZ

*DNS Security*

*Question 1.* Mr. Pritz, my understanding is that all of the new domains that will be selected by ICANN must agree to use the Domain Name System Security Extensions, known as DNS SEC. DNS SEC uses public key cryptographic digital signatures to authenticate the origin of the DNS data and assure the integrity of the DNS data.

- Currently, are DNS servers and DNS server software targeted for attack by hackers?
- Why is DNS SEC important to any broader global cyber-security effort?
- Does DNS SEC allow for any re-direction in its current implementation? Could it be made to? What would be some of the potential security vulnerabilities if DNS SEC were to allow any redirection?
- What is the status of DNS SEC implementation with respect to existing domains? Is it realistic to expect that the new domains will be compliant right from the start?

Answer. Today, DNS servers and server software are targeted for attack by hackers. There are recent examples of incidents in which hackers were able to impersonate DNS server responses, or feed false data to the servers, ultimately redirecting end users to rogue sites to install malware. For example, the “DNS Charger” case—recently the subject of an indictment in the Southern District of New York, infected over 4 million computers worldwide through this type of attack.

Coordinated deployment of DNSSEC is important in many respects. First, it will protect against attacks on DNS servers and software. Possibly even more important, however, the borderless nature of DNSSEC deployment has—for the first time—created a global, cross-organizational, trans-national platform for authentication, cyber security innovation and international cooperation. This will make DNSSEC a critical tool in combating the global nature of cyber crime.

<sup>2</sup>A summary of the trademark protections is available at <http://www.icann.org/en/topics/new-gtlds/rights-holders-with-insert-02sep11-en.pdf> and <http://www.icann.org/en/topics/new-gtlds/trademark-factsheet-insert-02sep11-en.pdf>.

DNSSEC does not allow for re-direction in its current implementation. Re-direction requires a change to the original record by a third party. With DNSSEC, any changes to the original record from the domain name owner's servers will be detected and flagged as an error or dropped. The validation occurs on the end user's machine to provide true end-to-end security.

Any change to DNSSEC to allow for re-direction would defeat its purpose. The purpose of DNSSEC is to use digital signatures to ensure records do not get changed "in flight." An alternative could be to put full trust in your Internet service provider (ISP) to perform the validation and enter manual re-direction entries, however this appears to be an inadequate level of security. For example, in late 2011, an attack on servers at multiple Brazilian ISPs caused redirection to malware-infected sites before connecting the ISP's customers to popular Internet sites.<sup>3</sup> This affected millions of users, and demonstrates that leaving validation to the ISP level is insufficient to protect against attacks.

If DNSSEC were to allow re-direction or filtering, that would make the system again vulnerable to insider attacks. In addition, re-direction could lead to poor performance due to the processing of large re-direction lookup tables for the billions of DNS queries that happen each day, as well as undesired responses. Re-direction could result—with one click—permanently leading the end user to use alternate, unfiltered and insecure non-DNSSEC validating servers.

DNSSEC adoption is growing. Today, 82 top-level domain name registries (covering 82 percent of existing domain names), including .COM and .ORG, have DNSSEC deployed. The new gTLD Program requires that all new registries deploy DNSSEC. In the United States, Comcast has begun rolling out DNSSEC to all 17.8 million of its Internet customers<sup>4</sup>, and internationally, we've seen adoption by network carriers such as Vodafone and Telefonica. It is realistic that new TLDs will be compliant from their introduction, as required in the Program. It is not a difficult requirement to meet, and current products, including hardware have DNSSEC support built in. ICANN and other organizations are regularly running training and awareness sessions to increase DNSSEC adoption.

#### *Cracking Down on Rogue Websites*

*Question 2.* Mr. Pritz, do you believe that the increase in top level domains combined with all the requirements ICANN is putting in place will make it easier, more difficult, or not change the ability of U.S. authorities to crack down on Internet sites—to use the phrase—that are dedicated to infringing activity?

*Answer .* The New gTLD Program includes protections (not required in today's TLD), designed to prevent malfeasance and to make it easier to crack down on malicious conduct where it occurs. Some of the tools directly relating to increased law enforcement access to information and ability to combat malicious conduct in new TLDs include:

- 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; and
- A requirement to establish a single point of contact responsible for the handling of abuse complaints (as requested by law enforcement authorities).
- 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; and

<sup>3</sup>See e.g., "Hackers poison Brazilian ISP DNS to infect users with banking Trojan," TECHWORLD, Nov. 9, 2011 at <http://news.techworld.com/security/3317148/hackers-poison-brazilian-isp-dns-to-infect-users-with-banking-trojan/>.

<sup>4</sup>See, "Comcast Completes DNSSEC Deployment," by Jason Livingood, Vice President, Internet Systems, January 10, 2012 at <http://blog.comcast.com/2012/01/comcast-completes-dns-sec-deployment.html>.

- 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.

In addition, ICANN is actively working to address 12 recommendations made by law enforcement regarding strengthening ICANN's contracts with its accredited registrars. Specifically, as directed by the Board, ICANN is currently in negotiations with its accredited registrars to amend 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 gTLD in 2013.

These negotiations include face-to-face meetings with law enforcement agencies to ensure understanding of law enforcement requirements. The negotiation anticipates 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 governments and law enforcement worldwide. Updates on the negotiations are available at <https://community.icann.org/display/RAA/Negotiations+Between+ICANN+and+Registrars+to+Amend+the+Registrar+Accreditation+Agreement>.

*Question 3.*

- Mr. Pritz, how many new gTLD and other domains does ICANN estimate will be created?
- What is the process by which ICANN will award the new gTLD and other domains? Will it be just a matter of who can bid the most?
- How much money is expected to be raised from the new gTLDs and other domains?
- What does ICANN intend to do with the funds? What are the mechanisms in place to assure accountability?

Answer. The number of new gTLDs that will be created through this first application round is still a matter of speculation. Early estimates coming from the community postulated that there would be 500 or more applications. Recently, some have estimated that 1000 or more applications will be made in the current round, opened on January 12, 2012. Once the application window closes on April 12, 2012, the speculation will come to an end and the full number of applications will be known. Not surprisingly, many companies are remaining quiet about their business strategies regarding plans to establish new gTLDs, making true estimates difficult.

If significantly more than 500 applications are received, the applications will be processed in batches of 500. In addition, on the advice of root server stability experts, ICANN has committed to limit the number of new TLD entered into the root in any one year to 1,000.

The extensive application and evaluation process is set out in the *Applicant Guidebook*, with over 300 pages of detail. Applicants must meet all of the application criteria, pass the rigorous evaluations, as well as pass through any of the four objection processes that may be used against the application. The key to the application process, however, is that it does not create a beauty contest among applicants or impose arbitrary limitations such as type of application that existed in two prior pilot rounds on new gTLDs. These pilot rounds are described in detail in response to Senator McCaskill's question 2.

All applicants are expected to pay the \$185,000 evaluation fee to ICANN, unless the applicants qualify for financial support. If an applicant qualifies for the available financial support, it will only pay \$47,000 towards the application fee. The \$185,000 application fee is calculated on a cost-recovery model, and was determined through a comprehensive and complex process that included identifying over 100 separate tasks required for the evaluation of a new gTLD application and seeking guidance from experts. The fee includes development costs (\$26,950 per application); application processing and evaluation costs (\$97,800 per application); and costs for risk mitigation steps, including allowance for unanticipated costs and variations between estimates and actual costs incurred (\$60,000 per application). A 14-page document setting out the methodology and further breakdown of the fee component is available at <http://www.icann.org/en/topics/new-gtlds/cost-considerations-04oct09-en.pdf>. This document is an update to the earlier "Cost Considerations of the

New gTLD Program”, published in October 2008, available at <http://www.icann.org/en/topics/new-glds/cost-considerations-23oct08-en.pdf>.

While there is a possibility that multiple applicants for the same TLD could proceed to an auction to operate the TLD, ICANN intends the auction process as a last-resort method. ICANN encourages applicants to work together to arrive at a mutually-agreeable solution instead of allowing the competing applications to proceed to an auction. To the extent that a TLD proceeds to auction and generates additional funds, I discuss below ICANN’s commitments to using these funds towards its not-for-profit mission.

As a Not-for-Profit Public Benefit Corporation, ICANN is committed to its not-for-profit mission. For ICANN, that commitment requires us to assure that excess funds generated through the New gTLD Program (*i.e.*, those that exceed the costs incurred for the processing, evaluation and other components of the New gTLD Program) are used in furtherance of ICANN’s mission. The evaluation fee has been calculated to recover costs and not exceed those costs. If evaluation fees exceed actual costs, future evaluation fees will be reduced. If costs exceed fees, then ICANN will absorb that and future fees will be increased to meet the actual costs. For additional funds accruing to ICANN other than evaluation fees, such as the auction proceeds mentioned, the *Applicant Guidebook* addresses the issue in this way:<sup>5</sup>

It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Any proceeds from auctions will be reserved and earmarked until the uses of funds are determined. Funds must be used in a manner that supports directly ICANN’s Mission and Core Values and also allows ICANN to maintain its not for profit status.

Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN’s security and stability mission.

ICANN handles its budgeting processes in an open and transparent manner. Not only will the community discussion regarding the use of excess funds be the subject of community consultation, but the funds will also be tracked and accounted for within ICANN’s publicly-posted financial documents.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE McCASKILL TO  
KURT PRITZ

*Question 1.* I recognize that ICANN has put a tremendous amount of work and study into the planned expansion of top-level domain names. There have been a number of economic studies, dozens of comment periods and seven versions of the Applicant Guidebook before the final one was issued. ICANN clearly views the expansion of gTLDs as vital to the growth and viability of the Internet.

Given how much time, effort and study has been put into this decision, I find it disturbing that there is still so much dispute about expansion. There is clearly a lack of consensus about these changes in the business and non-profit industries as well as concerns from law enforcement. This is not a decision to be taken lightly and I believe there needs to be better agreement on the outstanding issues from all interested parties.

Both of you have very differing opinions about the implications of the gTLD expansion. Why has it taken this long to get this out in the open?

Mr. Jaffe, there was an extensive comment period before the guidelines were issued, which I’m sure you were aware of—did you and other industries fully participate in the process? Do you disagree with the economic studies that ICANN has cited saying this would increase competition and innovation? If so, why?

---

<sup>5</sup>See Module 4, Page 19 of the *Applicant Guidebook*, version 2010–01–11.

Mr. Pritz, how much weight was given to the concerns raised by Mr. Jaffe and others with his viewpoints? The danger of increased copyright infringement appears to be a legitimate issue—do you agree?

Answer. Formation of rights protection mechanisms for the new gTLDs has been an important, legitimate concern throughout the development of the New gTLD Program.

The years of policy and implementation design work that have gone into the New gTLD Program have formed a program that will result in TLDs that are required to offer more protections than TLDs that have already been introduced into the Domain Name System. The program was designed over more than six years, with input from no less than ten independent expert and community working groups addressing the issues that ANA continues to raise outside of the multi-stakeholder process. There are significant trademark protections designed by intellectual property experts. There are substantial protections against registry failure, including requirements for registry transition planning and designation of emergency registry operators, so that even in the event of registry failure, consumers will have a period of three to five years until basic registry operations are concluded.

One of the hallmarks of ICANN is its ability to call together world-class experts to consider issues facing the ongoing stability and security of the Internet. For the new gTLD program, ICANN formed teams of: intellectual property experts to develop trademark protection mechanisms; Internet security experts to develop consumer protections; registry operators to create mechanisms to access registry data; financial services providers to develop thresholds for “secure” TLDs; and linguists to avoid user confusion.

In addition to those ten independent expert working groups formed, ICANN published, 59 explanatory memoranda and independent reports, thousands of comments in no fewer than 47 extended public comment periods, and 1,400 pages of comment summary and analysis as part of the community formation of the New gTLD Program. All comments were listened to and taken into account across the eight versions of the *Applicant Guidebook*. All of the rights protection mechanisms were borne of these community consultations.

The Association of National Advertisers is just one of the hundreds of voices that participated in the formation of the New gTLD Program. The ANA provided feedback using ICANN’s public comment 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 Implementation Response Team (comprised of 18 intellectual property experts) to recommend additional trademark protections, as discussed within my testimony. 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 of publishing information about the applied-for strings (personally identifiable information and sensitive security or proprietary information are not published), (2) background checks on applicants have been deepened, and (3) all new gTLD registries are required to maintain a “complete” or “thick” Whois model. As discussed in response to Senator Cantwell’s Question 1, work to require verification of Whois information is underway through ICANN’s negotiations with its registrars on the Registrar Accreditation Agreement. Those verification requirements are expected to be in place prior to the entry of the first new gTLD.

*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 2008 and was iterated in response to public comment, and an economic study was undertaken on registry competition and price caps, which supported that price caps should not be introduced within new TLDs absence a showing of market power. A detailed discussion regarding the fee structure is provided in response to Senator Cantwell's Question 2.

*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. As discussed in my response to Senator Boxer's Question 1, the objection processes are robust and well-defined.

*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 (the policy division of The Financial Services Roundtable) 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. 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 (a process where governments, through the Governmental Advisory Committee, provides notice regarding potential sensitivities with an application).

As seen from ICANN's responses, all of the ANA's comments were considered, responded to, and, as is clear from the above, largely accepted. This is indicative of the process that was followed with all stakeholder comment on the New gTLD Program to arrive at a balanced outcome.

The broad consensus work that went into the development of this program does not mean that everyone is satisfied with the result. There are some who wish for more restrictions; some for less. Lawrence Strickling, Assistant Secretary of Commerce for Communications and Information of the National Telecommunications and Information Agency, U.S. Department of Commerce, recently described the process of building consensus in ICANN's multistakeholder model, as well as the importance of respecting the outcomes reached, noted that while the multistakeholder process does not guarantee that everyone will be satisfied with the outcome, it is critical to respect the process and accept the outcome reached.<sup>6</sup>

ICANN's opening of the application window for new TLDs is in fulfillment of ICANN's role of accountability to the outcomes of the multistakeholder model. ICANN remains accountable to evaluation of the expansion and implementing refinements to the New gTLD Program that may arise through the multistakeholder model.

With the opening of the application window, ICANN's work continues. ICANN has already committed to solicit information as expeditiously as possible from the intellectual property community. This commitment, set out in a January 11, 2012 letter

<sup>6</sup>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>.

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.

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.

ICANN looks forward to ICANN and Internet community members continuing their involvement within the multi-stakeholder model and bringing their proposals for discussion among all of the Internet’s stakeholders.

*Question 2.* I know that ICANN is resistant to limiting the number of new gTLDs because it does want to pick winners and losers about which gTLDs should be added. But prior expansions have been limited. What are the concerns now of trying a pilot or more limited expansion to examine problems that may occur in the process?

*Answer.* 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 who proposed 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 Internationalized Domain Name country code TLD (IDN ccTLD) Fast Track process in 2009 that, to date had resulted in the delegation of 30 IDN TLDs, enabling countries and territories that use languages based on scripts other than Latin to offer users domain names in non-Latin characters (*e.g.*, Arabic, Chinese, Devanagari, Russian, Thai scripts).

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 and limited manner. Rather than limiting by number or type, the round is limited by a high bar of required competencies and protections, and a limited application period. 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.

As part of the consensus-building process, ICANN has agreed with governments and trademark holders that the next round of new TLD applications should occur after studying the impact of this round’s delegations on root zone stability and conducting a study on whether new trademark protections should be adjusted. ICANN will undertake these studies as soon as is practicable, in consultation with stakeholders. ICANN will also provide public updates on the ongoing process to determine the timing of the next round.

ICANN is also mindful of its commitments set forth in the Affirmation of Commitments to, “organize 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.”<sup>7</sup>

*Question 3.* I recognize that ICANN believes all of the issues have been fully vetted and that everyone has had ample time to state their views. But given the major disagreements that are still occurring, what is the harm in delaying implementation to further work through these issues in the hope of coming to a better consensus? In your view, what would happen if ICANN does not start the expansion process in January?

Answer. On January 12, 2012, ICANN opened the first application window for new gTLDs. As discussed within my written testimony, the opening of the application window is only the first step to rolling out new gTLDs, with the first new gTLD expected to be operational until 2013.

ICANN’s opening of the application window in accordance with the time-frame committed to in June 2011 was an important step in remaining accountable to the Internet community. As noted above, work is still ongoing—the Program will be subject to continued reviews and refinements. However, with the years’ worth of work already completed, the ten independent expert working groups, 59 explanatory memoranda and independent reports, thousands of comments in no fewer than 47 extended public comment periods, and 1,400 pages of comment summary and analysis, it was time for the Program to move into implementation so that the Internet community can start analyzing its effects using true data and experience.

Delaying the process serves those seeking to upset the multi-stakeholder model, designed by the U.S. Government to ensure an open Internet. Assistant Secretary Lawrence Strickling, recently stated:

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.]<sup>8</sup>

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK WARNER TO  
KURT PRITZ

*Question 1.* I understand the reasoning behind the high price of a new top level domain. It is important to me that the new gTLDs are only available to legitimate and serious organizations. However, up to 1,000 new TLD names at \$185,000 a piece is a considerable increase in income for ICANN. How will this money be used to regulate the expansive space new gTLDs will create? What are your plans for excess revenue? Will ICANN retain any revenue from the creation of new gTLDs? If so, how much revenue do you anticipate ICANN will receive over the next five years?

Answer. ICANN shares your concern that a high bar is created to apply for a new gTLD, to help assure that new gTLDs are available to organizations that are serious in commitment to operate a portion of the Internet infrastructure. As discussed in response to Senator Cantwell’s Question 3, the New gTLD Program fee is operated on a cost-recovery basis. As provided to Senator Cantwell:

The \$185,000 application fee is calculated on a cost-recovery model, and was determined through a comprehensive and complex process that included identifying over 100 separate tasks required for the evaluation of a new gTLD application and seeking guidance from experts. The fee includes development costs (\$26,950 per application); application processing and evaluation costs (\$97,800 per application); and costs for expected contingencies, including allowance for unanticipated costs and

<sup>7</sup> See <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>.

<sup>8</sup> 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/spechtestimony/2011/remarks-assistant-secretary-strickling-practising-law-institutes-29th-annual-te>.

variations between estimates and actual costs incurred (\$60,000 per application). A 14-page document setting out the methodology and further breakdown of the fee component is available at <http://www.icann.org/en/topics/new-gtlds/cost-considerations-04oct09-en.pdf>. This document is an update to the earlier “Cost Considerations of the New gTLD Program”, published in October 2008, available at <http://www.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf>.

While there is a possibility that multiple applicants for the same TLD could proceed to an auction to operate the TLD, ICANN intends the auction process as a last-resort method. ICANN encourages applicants to work together to arrive at a mutually-agreeable solution instead of allowing the competing applications to proceed to an auction. To the extent that a TLD proceeds to auction and generates additional funds, I discuss below ICANN’s commitments to using these funds towards its not-for-profit mission.

As a Not-for-Profit Public Benefit Corporation, ICANN is committed to its not-for-profit mission. For ICANN, that commitment requires us to assure that excess funds generated through the New gTLD Program (*i.e.*, those that exceed the costs incurred for the processing, evaluation and other components of the New gTLD Program) are used in furtherance of ICANN’s mission. The evaluation fee has been calculated to recover costs and not exceed those costs. If evaluation fees exceed actual costs, future evaluation fees will be reduced. If costs exceed fees, then ICANN will absorb that and future fees will be increased to meet the actual costs. For additional funds accruing to ICANN other than evaluation fees, such as the auction proceeds mentioned, the *Applicant Guidebook* addresses the issue in this way:<sup>9</sup>

It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Any proceeds from auctions will be reserved and earmarked until the uses of funds are determined. Funds must be used in a manner that supports directly ICANN’s Mission and Core Values and also allows ICANN to maintain its not for profit status.

Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN’s security and stability mission.

In addition to evaluation fees, each registry will contribute \$25,000 annually to ICANN operations, policy development and community outreach activities. (If some registries become very large, they will pay greater fees.) That fee will cover contractual compliance, registry and IANA services for that registry, as well as contribute to the general ICANN activities described here. It has been urged by the community that ICANN “staff-up” to meet compliance, IANA function and other needs to adequately serve the new environment. If these revenues exceed needs, fees will be reduced.

ICANN handles its budgeting processes in an open and transparent manner. Not only will the community discussion regarding the use of funds be the subject of community consultation, but the funds will also be tracked and accounted for within ICANN’s publicly-posted financial documents.

*Question 2.* Federal Trade Commission Chairman Leibowitz recently stated that “a rapid, exponential expansion of generic TLDs has the potential to magnify both the abuse of the domain name system and the corresponding challenges we encounter in tracking down Internet fraudsters.” His statement echoes the concerns of many that this expansion may be necessary, but the expansion from 21 gTLDs to up to 1000 gTLDs sounds extreme.

a. Why did ICANN choose to go from twenty-one top level domains up to over 500 in the first wave, or 1000 overall, instead of a more gradual increase over a set period of years? Can you please explain why this particular expansion program is the best plan for industry and consumers?

Answer. 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 re-

<sup>9</sup>See Module 4, Page 19 of the *Applicant Guidebook*, version 2010–01–11.

quired to include the standard protections that new TLDs must offer. The protections of the New gTLD Program were formed through ICANN's multi-stakeholder model.

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 gTLDs approved under this program will be introduced in a measured, limited manner. Rather than limiting by number or type, the round is limited by a high bar of required competencies and protections, and a limited application period. 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.

As part of the consensus-building process, ICANN has agreed with governments and trademark holders that the next round of new TLD applications should occur after studying the impact of this round's delegations on root zone stability and conducting a study on whether new trademark protections should be adjusted. ICANN will undertake these studies as soon as is practicable, in consultation with stakeholders. ICANN will also provide public updates on the ongoing process to determine the timing of the next round.

ICANN is also mindful of its commitment in the Affirmation of Commitments to, "organize 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."<sup>10</sup>

As discussed previously, the New gTLD Program today is created through over six years of policy and implementation work. The policy recommendations to guide the introduction of new gTLDs were created by the ICANN's Generic Names Supporting Organization (GNSO) over a two-year effort through its bottom-up, multi-stakeholder policy development process. The GNSO Council is comprised of all facets of the Internet community: Intellectual Property interests; business and commercial users; ISPs; non-commercial institutions, and ICANN's contracted registries and registrars.

In 2005, the GNSO initiated a formal, Bylaws-defined policy development process on the addition of new gTLDs. Policy recommendations are formed through consensus building among stakeholder groups representing: intellectual property, business, non-commercial interest, Internet service providers, registries and registrars. In the case of this program and the release of gTLDs in this manner, the GNSO approved the policy recommendations in 2007 by a bylaw described 19–1 vote in favor of the new gTLD Policy (the lone dissenting vote by a non-commercial interest found that the approved model had *too many restrictions*). The policy recommendations were submitted to ICANN's Board of Directors. In 2008, the ICANN Board approved the recommendations<sup>11</sup> and directed ICANN staff to commence the implementation phase.

<sup>10</sup> See <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>.

<sup>11</sup> GNSO Final Report on the Introduction of New Top Level Domains ("Final Report"), at <http://gns0.icann.org/issues/new-gilds/pdp-dec05-fr-partia-08aug07.htm> (Aug. 8, 2007); ICANN

After the directive to implement, ICANN continued working with the community on the design of the New gTLD Program to meet the policy recommendations. Since 2008, the New gTLD Program has been refined through ten independent expert working groups, 59 explanatory memoranda and independent reports, thousands of comments in no fewer than 47 extended public comment periods, and 1400 pages of comment summary and analysis. All comments were listened to and taken into account across eight versions of the *Applicant Guidebook*. The *Applicant Guidebook* implements the consensus policies developed by ICANN's multi-stakeholder community.

*Question 3.* Cyber-crime is a growing threat to the security and stability of the Internet, with broad and direct public policy and financial impacts. Law enforcement agencies, which have experience combating cyber-crime, have identified a series of specific problems which are limiting their ability to address this growing threat. In 2009, these law enforcement agencies made 12 concrete recommendations to reduce the risk of criminal abuse of the domain name system. It is my understanding that none of the recommendations offered by law enforcement were included in the gTLD expansion program.

a. Can you please explain why ICANN chose not to include these recommendations?

b. How will ICANN cooperate with law enforcement moving forward to make sure that safety concerns are properly addressed?

c. How does ICANN plan to review applications from state-owned enterprises?

d. If problems develop in any of the new gTLDs, how will ICANN be able to adequately monitor and police any abuses or mismanagement?

Answer.

#### *Law Enforcement Recommendations are Being Addressed*

As mentioned in response to Senator's Cantwell's Question 2, ICANN is actively working to address all twelve of the law enforcement recommendations referenced in the GAC's October 27, 2011 communication. Specifically, as directed by the Board, 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.

These negotiations include face-to-face meetings with law enforcement agencies to ensure understanding of law enforcement requirements. The negotiation anticipates 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 governments and law enforcement worldwide. Updates on the negotiations are available at <https://community.icann.org/display/RAA/Negotiations+Between+ICANN+and+Registrars+to+Amend+the+Registrar+Accreditation+Agreement>.

By February 20, 2012, proposed amendments to address the law enforcement recommendations (and more) will be posted for public comment. One important aspect of the negotiations focuses on the verification of Whois data, and work is underway to plan a targeted forum, including representatives of law enforcement and experts in verification. This forum would be open to the public and is expected to take place before the ICANN meeting in Costa Rica.

#### *Law Enforcement Helped Design New gTLD Protections*

Addressing the 12 law enforcement recommendations for improvement to the gTLD registrars is just one part of how ICANN remains responsive to law enforcement. In fact, law enforcement agencies worldwide have worked closely with ICANN in the new gTLD implementation process, with a goal of reducing domain name abuses. Representatives of U.S. law enforcement agencies played a critical role in proposing standards for background screening for applicants. Law enforcement agencies worldwide, including the FBI, the UK Serious Organized Crimes Agency (SOCA) and the Royal Canadian Mounted Police, supported proposals to aid in the prevention and disruption of efforts to exploit domain name registration procedures for criminal purposes. ICANN has built a relationship with Interpol and discussed safeguards and, in particular, the implementation of meaningful background checks.

---

Board resolution, <http://www.icann.org/en/minutes/resolutions-26jun08.htm> (June 26, 2008); GNSO Minutes, <http://gns0.icann.org/meetings/minutes-gns0-29oct03.html> (Oct. 29, 2003).

Also see The GAC Principles Regarding New gTLDs, at [http://gac.icann.org/system/files/gTLD\\_principles\\_0.pdf](http://gac.icann.org/system/files/gTLD_principles_0.pdf) (Mar. 28, 2007).

My testimony outlined a series of measures to mitigate against malicious conduct in new gTLDs, formed in part through law enforcement recommendation and involvement. Those measures 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;
- 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.

DNS abuse and security are regularly the subject of collaborative meetings between ICANN and the U.S. law enforcement community, as well as representatives of international agencies.<sup>12</sup> ICANN expects this successful collaboration to continue. To that end, there are formal “DNS Abuse” sessions at every ICANN public meeting where ICANN and law enforcement representatives come together to advance this important work.

#### *Applications from State-Owned Enterprises*

All applications under the New gTLD Program are subject to the same application and evaluation process as laid out in the *Applicant Guidebook*. As part of the application process, ICANN acts in compliance with all U.S. laws, rules and regulation. This includes the economic and trade sanctions program administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. ICANN is prohibited from providing most goods or services to residents of sanctioned countries or their governmental entities or to specially designated nationals and blocked person without an applicable U.S. government authorization or exemption. ICANN generally will not seek a license to provide services (through the gTLD Program or elsewhere) to an individual or entity on the SDN list.

#### *ICANN Commits to Continued Monitoring of New gTLDs*

In response to your Question 1, we identify the reviews that ICANN has committed to undertake to assist in identifying the results of this first round. In addition to these reviews, ICANN is committed to a continued monitoring of the effects of the measured rollout of new TLDs, as well as working with law enforcement and the Internet community as a whole to identify new areas of concern and to be proactive in determining how to address new issues as they arise.

*Question 4.* There are a number of failed top-level domain names from previous ICANN expansions—“museum” for instance. Unfortunately, such failures can be costly for companies that have registered and they can be disruptive to users. Further, I understand that ICANN’s own reports indicate that “if a new gTLD failed and ceased operation, external costs might be imposed on the Internet community.

<sup>12</sup>ICANN’s relationships with law enforcement are not limited to the New gTLD Program; ICANN coordinates regularly on security-related issues and to address threats to the DNS.

Registrants . . . might be stranded. . . . Internet users might face increased clutter on the Internet if links fail to resolve.”

a. The high-tech companies in Virginia— not to mention Internet users generally— would not welcome such volatility. What, if anything, has been done to address this concern?

Answer. While the .museum registry may not have achieved a level of desired success or adoption, the .museum registry is still operational. No gTLD registries have failed during ICANN’s existence. However, the risk of potential failure for a new gTLD registry is an understandable and valid concern. Among other safeguards, ICANN has in place provision for an “Emergency Back End Registry Provider” to take over operations for a failed registry to ensure the interests of registrants are protected and domain names continue to resolve.

The issue of registry failure has been considered in detail through the work on the New gTLD Program. First, the extensive evaluation process will help assure that only companies that meet the stringent financial requirements are able to operate new TLDs. Of course, this pre-emptive evaluation process may not fully protect against future registry failure, and ICANN has included multiple additional protections within the New gTLD Program to address potential failure.

During the application process, applicants are required to provide evidence that critical functions of the registry will continue to be performed even if the registry fails. This includes a requirement that the costs for maintaining critical registry functions over an extended period of time (between three to five years) be estimated as part of the application process, and registries must have available a Continuing Operations Instrument (funded through a letter of credit or an escrow account) that ICANN may invoke to pay a third party to maintain the critical registry functions.

ICANN is currently working to identify the entity that will serve as an Emergency Back End Registry Operator (EBERO), which will step in to perform the critical registry functions during the three-to-five year period. These provisions are expected to protect registrants against the risk of immediate registry failure.

To facilitate any need for emergency transition, ICANN also requires the escrow of registry data that the EBERO would be allowed to access for the purpose of providing the registry services.

In the event of a termination of a Registry Agreement, and in consultation with the registry operator, ICANN maintains the right to determine whether to transition the operation of a TLD to a successor registry operator as is necessary to protect the public interest. Transition is not required, however, if a registry operator’s use of the TLD is for its own exclusive use and all names are registered and maintained by the registry operator.

*Question 5.* The protection and development of intellectual property is essential to economic growth in technology, and especially important to high-tech entities in Virginia. I am told that ICANN’s own experts have said the following: “There may also be indirect harm from the loss of intellectual property owners’ incentives to invest in that intellectual property due to concerns that some of the benefits of that investment would be misappropriated.”

a. Is this an accurate statement?

b. Has anything been done to address this issue? If not, why is this expansion going forward in the face of such risks?

Answer. Prior to this rollout, ICANN commissioned five economic studies that examined anticipated benefits and costs of the new gTLD program, the effects of price constraints, and the benefits of vertical integration. All support a conclusion that Internet users stand to benefit from the introduction of new gTLDs and that potential costs should be mitigated with the introduction of new safeguards.

As part of this work, economists did note that one of the potential external costs that may be imposed through new gTLDs is the impact on investments in intellectual property. However, in the same report, the economists clarified that these external costs can be reduced through the institution of “rules and procedure to protect companies’ intellectual property rights.” The economists noted that there are a range of effective rights protection mechanisms that balance intellectual property protections against the interests of those with legitimate interests in registering a domain name, including watch lists and sunrise periods. This is discussed in Michael Katz, Gregory Rosston and Theresa Sullivan’s report entitled *Economic Considerations in the Expansion of Generic Top-Level Domain Names—Phase II Report: Case Studies*, available at <http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf>.

ICANN, with experts from the intellectual property community, addressed this cost/benefit concern. Trademark experts created rights protection mechanisms that

exceed the bar suggested by the economists. The new trademark protection that help protect intellectual property rights and combat abuses include:

- 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;
- Mandatory sunrise *and* Trademark Claims processes for *all* new gTLDs;
- 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 where rights holders can assert claims directly against TLD registry operators for domain name abuse if the registry has played an active role.

The implementation work to create the New gTLD Program carefully identified risks such as the one raised in your question, and created expert-informed solutions to address those risks. The Katz/Rosston report is just one of five economic studies performed in consideration of the New gTLD Program. All supported a conclusion that Internet users stand to benefit from the introduction of new gTLDs.

The four additional reports are:

- Dr. Dennis Carlton, Report Regarding ICANN’s Proposed Mechanism for Introducing New gTLDs, at <http://www.icann.org/en/topics/new-gtlds/carlton-reproposed-mechanism-05jun09-en.pdf> (“Carlton I”);
- Dr. Dennis Carlton, Preliminary Analysis Regarding Price Caps for New gTLD Internet Registries, at <http://www.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf> (“Carlton II”);
- CRA International, Revisiting Vertical Separation of Registries and Registrars, at <http://www.icann.org/en/topics/new-gtld-crai-report-24oct08-en.pdf>;
- Michael Katz, Gregory Rosston and Theresa Sullivan, An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names, at <http://www.icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf> (“Katz/Rosston Phase I”); and

The reports are detailed. Briefly summarized, the reports indicate that: benefits will accrue from the opening of this market in a way similar to other markets; innovation (and thus benefit) is difficult/impossible to quantify; and costs should be mitigated through the adoption of new trademark and consumer protections.

This work followed the careful consideration of the Internet community through ICANN’s bottom-up process.

Given the scope of the economic study already undertaken, as well as the commitment to measuring the effects of new gTLDs once there is actual data to inform that assessment, the Board and the Governmental Advisory Committee agree that further economic study would not be beneficial prior to the opening of the application round. Instead, the Board and the GAC focused on the collection of information that will inform the analysis of the effects of the introduction of new gTLDs after this first round. The *Applicant Guidebook* now includes application questions that are specifically targeted to collect information relating to stated purposes and anticipated outcomes of each application, for use in later studies.

*Question 6.* I’ve heard a number of questions from industry regarding their concerns with the new TLD system. However, these changes will also impact Internet users. I am concerned that some of my constituents will be confused by the new TLD program at the least and could be exposed to additional consumer harm such as cybersquatting, typosquatting, phishing, malware, etc. If it is more difficult for Internet users to determine whether a website is legitimate, it will be easier for criminals to lure Internet users to fake websites that include malicious content.

a. Can you please explain how the new program will change the Internet for consumers?

b. How will ICANN work to make sure users are aware a coming changes and know how to navigate the new landscape?

What specific safeguards will be put into place to prevent cybersquatting and typosquatting?

Answer. The protections within the New gTLD Program will create TLDs that are more secure for Internet users. For example, all new TLDs are required to implement domain name security extensions (DNSSEC), reducing the risk of “man-in-the-middle” attacks and spoofed DNS records. In terms of user confusion as a result of cybersquatting, the new protections for intellectual property and to mitigate mali-

cious conduct all work to reduce cybersquatting activities in the expanded space. We expect that new TLDs will be a less fertile ground for wrongdoing and, as a result, the Domain Name System, as a whole will be improved. Abuses are prevalent in the larger TLDs, not within the smaller, more differentiated registries.

While there is always some uncertainty and concern with change, Internet users have always proved adept at adapting to change and taking advantage of new, value-added services. In the case of new gTLDs, it is thought that the new landscape will reduce confusion. TLDs that are clearly tied to brands or communities will create consumer awareness and result in more certainty. Also, that brand awareness will build certainty that a domain is what it purports to be—that is, reduce the risks of cybersquatting. As an example, take *senate.gov* names: users have great certainty that use of a *.gov* name will reliably lead to a U.S. Government site.

The New gTLD Program allows for community-based TLDs, as well as other TLDs that will have special attributes that may make them attractive to users. For example, work has been conducted towards creating a higher security TLD for the financial services industry, where the registry operator would commit to additional protections for the development of a TLD where consumers know they are making financial transactions in a trusted space. The opportunities that may be available in new gTLDs are endless—the opening of the new gTLD space will allow for creativity and innovation that follows the opening of other markets.

ICANN and the Internet community recognize that there will be a need to educate consumers about the changing landscape of the Internet, and ICANN understands that communication and education is a necessary component of any rollout. ICANN is working with its stakeholder community to plan for this educational work.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO  
KURT PRITZ

*United Nations Model*

*Question 1.* There has been a growing contingency of other countries critical of the ICANN multi-stakeholder model and about the US' involvement and influence with ICANN. Some governments, not necessarily friendly to the U.S., are seeking to increase their power over the Internet and its governance.

Russia and China (with Tajikistan and Uzbekistan) have proposed to the United Nations an Internet "Code of Conduct," which a senior State Department official stated "they seek to justify the establishment of sovereign government control over Internet resources and over freedom of expression in order to maintain the security of their state."<sup>13</sup> Even Russian Prime Minister Vladimir Putin remarked recently his desire of "establishing international control over the Internet using the monitoring and supervisory capabilities of the International Telecommunication Union (ITU)."<sup>14</sup>

The other proposal by India, Brazil and South Africa calls for the creation of a new body within the United Nations to oversee Internet policy. As a result, ICANN as well as the Internet Governance Forum (IGF) could be significantly marginalized or hijacked by this new U.N. entity.

These proposals seem to be in direct conflict with our Nation's effort to privatize the Internet through transferring the authority of the DNS to the private sector and for the Internet governance model to be private-sector led.

If the U.S. Government followed the advice to unilaterally delay the gTLD expansion, what do you believe the impact would be globally and do you believe this would fan the flames of anti-U.S. government sentiment with respect to Internet governance? Could it give more momentum to other governments' calls to have the United Nations assert oversight over ICANN or replace it altogether?

Answer. If the U.S. Government or any entity unilaterally modified a decision by ICANN's multistakeholder community, it would undermine if not decimate the legitimacy and credibility of the multistakeholder model. Lawrence Strickling, Assistant Secretary of Commerce for Communications and Information, has spoken forcefully on two recent occasions in support of the multistakeholder model and the danger presented by requests for the U.S. Government to unilaterally modify the new gTLD program. On December 8, 2011,<sup>15</sup> he addressed these points as follows:

<sup>13</sup> [http://www.huffingtonpost.com/2011/09/27/russia-china-internet-control\\_n\\_984223.html](http://www.huffingtonpost.com/2011/09/27/russia-china-internet-control_n_984223.html).

<sup>14</sup> <http://premier.gov.ru/eng/events/news/15601/>.

<sup>15</sup> Remarks of Assistant Secretary Strickling at the Practising Law Institute's 29th Annual Telecommunications Policy & Regulation Conference on December 8, 2011, (available at <http://>

[We 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.]

On January 11, 2012<sup>16</sup> he stated:

[M]ultistakeholder processes have succeeded by their very nature of openness and inclusiveness. They are most capable of attacking issues with the speed and flexibility required in this rapidly changing Internet environment.

Nonetheless, we face challenges to this model even in our own country.

. . .

For the last six years, ICANN and its many stakeholders have debated the rules for expanding of the domain name system (DNS)—essentially the Internet’s address book—through the introduction of new generic top-level domain names (gTLDs). ICANN’s process involved global stakeholders from the business community, civil society, registries, registrars, and governments. Nonetheless, in December we saw parties that did not like the outcome of that multistakeholder process trying to bypass ICANN by seeking 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.

. . .

Each challenge to the multistakeholder model has implications for Internet governance throughout the world. 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 would like to see governments take control of the Internet.

*Question 2.* If the U.N. did take control or governments had greater involvement, what impact would that have on American businesses and citizens that utilize the Internet? What impact could it have on Freedom of Speech?

*Answer.* The Affirmation of Commitments between the U.S. Department of Commerce and ICANN sets out landmark commitments to “(a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent; (b) preserve the security, stability and resiliency of the DNS; (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and (d) facilitate international participation in DNS technical coordination.”

Some of the commitments that ICANN undertakes include “commitments to: (a) maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet; (b) remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community; and (c) to operate as a multi-stakeholder, private sector led organization with input from the public, for whose benefit ICANN shall in all events act.”

While the ICANN model is not perfect, it has shown to be a powerful, dynamic model that is capable of reaching consensus positions on extremely difficult issues. The multistakeholder model that is ICANN is at risk if there is a heightened level of governmental involvement above that exercised today through the Governmental Advisory Committee (GAC). American businesses and citizens are very active in the ICANN model, and continuing to remain accountable to them—along with the global Internet community—is essential to ICANN’s mission.

[www.ntia.doc.gov/speechtestimony/2011/remarks-assistant-secretary-strickling-practising-law-institutes-29th-annual-te](http://www.ntia.doc.gov/speechtestimony/2011/remarks-assistant-secretary-strickling-practising-law-institutes-29th-annual-te).

<sup>16</sup>Remarks by Assistant Secretary Strickling at the Brookings Institution’s Center for Technology Innovation, January 11, 2012 (available at <http://www.ntia.doc.gov/speechtestimony/2012/remarks-assistant-secretary-strickling-brookings-institutions-center-technology>).

Moving to a U.N. model pushes those stakeholders outside government to an inconsequential role. U.S. businesses would be reduced to influencing the U.S. vote in a one country—one vote model.

Assistant Secretary Strickling and former Ambassador David Gross have spoken eloquently on the negative impact of abandoning the multistakeholder approach to Internet governance issues. In the following excerpts, each describes proposals to give governmental bodies such as the UN's International Telecommunications Union (ITU) exclusive responsibility for Internet governance and standards development. Assistant Secretary Strickling recently described<sup>17</sup> the proposals and their potential impact as follows:

Each challenge to the multistakeholder model has implications for Internet governance throughout the world.

. . .

As many of you are aware, this is precisely the challenge we face this December in Dubai, at the World Conference on International Telecommunications (WCIT). This conference, which is hosted by the International Telecommunication Union (ITU), attracts delegates from the ITU's 193 member countries.

. . .

[S]ome countries have submitted proposals to make ITU standards recommendations mandatory and thus enforceable by treaty, a drastic departure from their current voluntary nature. Some countries have proposed moving oversight of critical Internet resources into the ITU, including naming and numbering authority from multistakeholder institutions such as ICANN. Many governments have called for the ITU to play a greater role in regulating peering and termination charges in order to compensate for lost telecommunication fees, the so called "bypass phenomenon". Also, in an effort to establish the ITU as an operational authority on international cybersecurity, some more authoritarian countries have proposed to include cybersecurity and cybercrime provisions into the ITRs.

. . .

The challenge before us is clear. We must continue to make the case that an Internet guided by the open and inclusive processes as articulated in the OECD Policymaking Principles will encourage the rapid economic growth and wealth creation that the Internet has made possible.

It is incumbent upon us to convince other nations that enshrining the Internet in an international treaty will not accomplish these goals. The framework simply will not fit. An Internet constrained by an international treaty will stifle the innovators and entrepreneurs who are responsible for its awesome growth. As FCC Commissioner Robert McDowell recently said, "upending the fundamentals of the multistakeholder model is likely to Balkanize the Internet at best, suffocate it at worst". The states who seek to impose their control over the Internet will only be further removed from its awesome potential.

Former Ambassador David Gross described<sup>18</sup> the proposals and their potential impact as follows:

Once again, many companies in the telecoms and information and communications technology (ICT) sector are facing the spectre of a United Nations agency (in this case the International Telecommunication Union (ITU)) regulating critically important aspects of the Internet as well as substantially expanding its jurisdiction over the telecoms and ICT industries.

. . .

Some within the ITU and among its 193 member states would like to see major changes to the treaty, particularly with respect to the Internet as well as wireless, IP-based, and next-generation networks, which have historically been mostly free of intrusive economic and other regulation.

<sup>17</sup>*Id.*

<sup>18</sup>"The 2012 World Conference On International Telecommunications: Another Brewing Storm Over Potential UN Regulation Of The Internet," November 2011 (available at <http://www.whoswholegal.com/news/features/article/29378/the-2012-world-conference-international-telecommunications-brewing-storm-potential-un-regulation-internet/>). See also, "Governments vie for control of the Web," by Eliza Krigman, POLITICO Pro, January 18, 2012 (available at <https://www.politicopro.com/story/tech/?id=8499>; subscription required) ("The end result [of adoption of some proposals at the WCIT], American officials warn, would be an Internet more susceptible to censorship and less potent as a tool to foster democracy.")

The WCIT could lead to new regulations governing how these businesses are run and how such businesses may interact with their customers, partners, and vendors, as well as how they can innovate and provide new and improved services. Moreover, because of the implicit attacks on established mechanisms of Internet governance, the WCIT has the potential to destabilise and politicise standardisation processes and the management of the Internet architecture in a way that could also hinder innovation and efficiency.

*Growth of the Internet and expansion of the domain name system*

*Question 3.* The Internet has been so amazingly beneficial to small businesses because it allows them to globally expand their local markets and enables them to compete with Fortune 100 companies because the size of the computer screen is the same for a small business in Bangor as it is for a multi-national corporation like Wal-mart. Small businesses are the anchor to not only Maine's economy but to our Nation's and the Internet has been invaluable to them.

Supporters of the expansion have stated it will bring new competition and choice to the Internet space and allow the Internet to continue to grow in the number of websites, content, applications, and online services. It also presents businesses new models to harness the boundless benefits of the Internet.

There have already been expansions to top level domains in the past to accommodate for the growth of the Internet, with the intro of gTLDs like .biz, .info, .museum, .mobi, etc.

If the Internet is going to continue to grow shouldn't the domain name system?

Answer. Yes. Since 1998, ICANN has been working to execute on its promise to facilitate competition in the Domain Name System while protecting vital security, consumer and business interests. The New gTLD Program has been carefully crafted over the past six years to achieve this goal. As stated in my written testimony,

A founding mandate for ICANN, included within the United States Government's "White Paper on the Management of Internet Domain Names and Addresses",<sup>19</sup> is to create competition in the domain name market and specifically, to "oversee policy for determining the circumstances under which new TLDs are added to the root system."<sup>20</sup> The introduction of new gTLDs "has been a long-standing goal" of the relationship between the Department of Commerce and ICANN.<sup>21</sup> The relationship formed with the United States Government in 1998, and set out in the many Memoranda of Understanding between the Department of Commerce and ICANN, included a core objective to "Define and implement a predictable strategy for selecting new TLDs."<sup>22</sup> This fundamental assumption that increasing the number of gTLDs will increase competition resulted in the House Committee on Energy and Commerce initiating a 2001 hearing regarding the potential detrimental effects to competition when ICANN approved only seven of 200 applied-for TLDs in an earlier application round.<sup>23</sup>

Today, the DNS is continues to grow. The next billion Internet users will be from outside the U.S. but their participation represents opportunity for all businesses and communities. Since 2010, 30 new country code top-level domains in non-Latin scripts have been added to the DNS. These internationalized domain names, or IDN ccTLDs, help bring the Internet to the next billion people. We've seen innovation in the business models for existing country code TLDs, such as .CO (Colombia) and .ME (Macedonia) to take advantage of commercial opportunities waiting in the U.S. and beyond. But only TLDs introduced under the New gTLD Program will provide

<sup>19</sup>United States Department of Commerce, *White Paper on the Management of Internet Domain Names and Addresses* ("White Paper"), at [http://www.ntia.doc.gov/ntiahome/domainname/6\\_5\\_98dns.htm](http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm) (June 6, 1998)

<sup>20</sup>*Id.*

<sup>21</sup>Testimony of Fiona Alexander, Associate Administrator, National Telecommunications and Information Administration, June 4, 2009, before the Subcommittee on Communications, Technology, and the Internet, Committee on Energy and Commerce, United States House of Representatives, available at <http://www.ntia.doc.gov/speechtestimony/2009/testimony-associate-administrator-fiona-alexander-issues-concerning-internet-co>.

<sup>22</sup>See, e.g., Amendment 6 to Memorandum of Understanding Between the U.S. Department of Commerce and The Internet Corporation For Assigned Names And Numbers, at [http://www.ntia.doc.gov/ntiahome/domainname/agreements/amendment6\\_09162003.htm](http://www.ntia.doc.gov/ntiahome/domainname/agreements/amendment6_09162003.htm) (Sept. 16, 2003).

<sup>23</sup>See Transcript of February 8, 2001 Hearing before the Subcommittee on Telecommunications and the Internet of the Committee on Energy and Commerce, House of Representatives, On Hundred Seventh Congress, First Session, available at <http://archives.energycommerce.house.gov/reparchives/107/hearings/02082001Hearing37/print.htm> ("some view ICANN's approval of only a limited number of names as thwarting competition").

the significant, mandatory protections I describe in my testimony. The introduction of the New gTLD Program is therefore not just fulfilling a mandate to add competition through the introduction of more TLDs, but also represents the creation of a new, more secure baseline for the expansion of the Domain Name System.

*White Paper*

*Question 4.* In the “White Paper,” which was released in 1998 and led to the formation of ICANN is competition, has as one of its core principles is competition—that competition and consumer choice should drive the management of the Internet because they will lower costs, promote innovation, encourage diversity, and enhance user choice and satisfaction.

Comments in the White Paper<sup>24</sup> on the issue of new generic top level domains showed “very strong support for limiting government involvement during the transition period on the matter of adding new gTLDs. Specifically, most commenters—both U.S. and non-U.S.—suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running.” Also, commenters noted that “there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution.”

Isn’t the expansion of gTLD a form of competition, where .hotels or .cars could compete against .com or .biz? If not, why?

Answer. Yes. In response to your Question 3 under the “*Growth of the Internet and expansion of the domain name system*” heading, it is noted that the introduction of the New gTLD Program is expected to fulfill ICANN’s mandate to introduce competition in the DNS. ICANN does not know all of the potential business models that are contemplated, nor is ICANN in a position to judge or foretell which business models may succeed. That is the role of the market. ICANN’s role is to allow for the creation of opportunities in the DNS for marketplace participants to compete, to innovate and to offer users new products and services.

For at least the past two years, future applicants have attended ICANN meetings, passing out marketing materials with their “dot-*NEWDOMAIN*” prominently displayed. Consulting businesses to advise applicants have arisen. Over 120 persons or entities have publicly announced their intention to apply for new gTLDs. Nearly 90 declared applicants have active websites marketing their new gTLD idea proposing all types of gTLDs—city names, community ideas, branding opportunities for internationally known corporations and others.

There are other forms of competition in addition to new gTLDs, for example, the introduction of services provided by Twitter and Facebook, and also the increased use of “apps.” However, one form of introducing competition should not foreclose another. The formation of ICANN in 1998 and the potential introduction of new gTLDs have been clearly described as an opportunity for increasing competition, choice and innovation. That introduction has taken place in a careful way, including two limited rounds in 2000 and 2004, the limited introduction of IDNs starting in 2010.

There is tremendous opportunity for innovation, competition and consumer choice within the New gTLD Program.

*Question 5.* Several commenters also stated “the market will decide which TLDs succeed and which do not.” What is wrong with allowing the market to continue to decide with new gTLDs from the expansion?

Answer. Allowing the market to determine the success of new gTLD offerings is one of the fundamental tenets of the introduction of the New gTLD Program. One of the policy recommendations that serves as the basis for this program is that the introduction of TLDs should only be limited by round, and not by subjective and arbitrary factors. In addition, the economic studies, described in response to Senator Warner’s Question 5, support that competition results from the opening of markets—not by imposing artificial limitations such as number or type.

One of those economists, Dr. Dennis Carlton, Deputy Assistant Attorney General for Economic Analysis, Antitrust Division, U.S. Department of Justice from October 2006 through January 2008, explained: “ICANN’s plan to introduce new gTLDs is likely to benefit consumers by facilitating entry which would be expected both to bring new services to consumers and mitigate market power associated with .com and other major TLDs and to increase innovation.”<sup>25</sup> Delay will inhibit competition

<sup>24</sup><http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses>.

<sup>25</sup>Dr. Dennis Carlton, Report Regarding ICANN’s Proposed Mechanism for Introducing New gTLDs, at <http://www.icann.org/en/topics/new-gtlds/carlton-re-proposed-mechanism-05jun09-en.pdf> at paragraph 23.

in the use of generic, non-trademarked terms, and runs counter to the generally accepted view that market entry benefits consumers by expanding output and lowering price. Potential innovations in the new gTLD namespace will be stifled if limitations to entry are imposed, which would “essentially freeze the number of TLDs fifteen years after the first commercial development of the Internet.”<sup>26</sup>

The introduction of new gTLDs will also serve to alleviate issues in existing market conditions: concentration within some existing registries, most generic strings unavailable, and those that trade on the value of the current marketplace holding portfolios based upon the value of current .COM names.<sup>27</sup>

While the market should decide which TLDs succeed and which do not, we understand the valid concerns associated with registry failure and ICANN has put into place consumer interest protections.

Among other safeguards, ICANN has in place provision for an “Emergency Back End Registry Provider” to take over operations for a failed registry to ensure the interests of registrants are protected and domain names continue to resolve.

The issue of registry failure has been considered in detail through the work on the New gTLD Program. First, the extensive evaluation process will help assure that only companies that meet the stringent financial requirements are able to operate new TLDs. Of course, this pre-emptive evaluation process may not fully protect against future registry failure, and ICANN has included multiple additional protections within the New gTLD Program to address potential failure.

During the application process, applicants are required to provide evidence that critical functions of the registry will continue to be performed even if the registry fails. This includes a requirement that the costs for maintaining critical registry functions over an extended period of time (between three to five years) be estimated as part of the application process, and registries must have available a Continuing Operations Instrument (funded through a letter of credit or an escrow account) that ICANN may invoke to pay a third party to maintain the critical registry functions.

ICANN is currently working to identify the entity that will serve as an Emergency Back End Registry Operator (EBERO), which will step in to perform the critical registry functions during the three-to-five year period. These provisions are expected to protect registrants against the risk of immediate registry failure.

To facilitate any need for emergency transition, ICANN also requires the escrow of registry data that the EBERO would be allowed to access for the purpose of providing the registry services.

In the event of a termination of a Registry Agreement, and in consultation with the registry operator, ICANN maintains the right to determine whether to transition the operation of a TLD to a successor registry operator as is necessary to protect the public interest. Transition is not required, however, if a registry operator’s use of the TLD is for its own exclusive use and all names are registered and maintained by the registry operator.

ICANN’s past experience with its 2000 and 2004 pilot programs on the introduction of new gTLDs, described in response to Senator McCaskill’s Question 2, represent limited expansion. ICANN learned valuable lessons from each of these rounds: 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.

Today’s New gTLD Program instead allows for competition tempered by the suite of new protections for trademark owners and Internet users. Choice and competition will be introduced in a more secure environment than ever before.

*Question 6.* If commenters are correct that “there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution” then why should we place “artificial or arbitrary” limits on the Internet?

*Answer.* Today’s New gTLD Program is balanced so as not to impose artificial or arbitrary limits of any kind. Limits on the Program were created to safeguard specific, important interests, for example, property rights and community interests. The mandatory rights protection mechanisms in place for the New gTLD Program are broader than the protections offered to trademark holders in the rollout of any other media of which I am aware. However, the rights protection mechanisms were carefully crafted, balancing the input of trademark experts against third parties with

<sup>26</sup> *Id.*

<sup>27</sup> Katz/Rosston Phase II, at paragraphs 75–76.

legitimate rights to register domain names. To that end, including the suite of trademark protections in the New gTLD Program is not an “artificial or arbitrary” limit on the Internet and ICANN is committed to enforce the mandatory requirements. The creation of trademark protections is also supported by the economic analysis described in response to Senator Warner’s Question 5.

The protections that exist are careful and balanced. Further, ICANN has agreed to undertake studies of a post-launch review on the feasibility of enhancing both the scope of the words registered within the Trademark Clearinghouse and the length of the Trademark Claims notification process. If further protection is warranted and feasible, these enhanced protections could be included in future gTLD application rounds. Imposition of drastic limitations—and creating rights that are neither justified on the basis of experience nor recognized in other areas—could impair the ability for competition to flourish in new gTLDs.

#### *Expansion of Internet Addresses*

*Question 7.* The Internet has revolutionized some many different areas of society and the economy. The innovation, adoption, and sheer size of the Internet are simply unparalleled. The Internet currently comprises of approximately 2 billion users and more than five billion devices. Cisco estimates there will be more than 50 billion Internet connected devices by 2020.

However, we have for the most part exhausted the existing pool of Internet addresses—IPv4 provides for approximately 4.3 billion addresses. The shortage has been the driving factor in creating and adopting several new technologies as well as new and larger addressing system, known as IP version 6. This migration from a 32-bit addressing space to a 128-bit addressing, will provide 340 trillion, trillion, trillion separate addresses—enough for every human bring to use many trillions of address. With IPv6, there will be approximately 670,000 IP addresses for every squared nanometer of the earth’s service. To put that into perspective, a human hair is 100,000 nanometers wide.

However, the implementation of IPv6 has been somewhat slow. Last year, I read only about 20 percent of the Internet was IPv6 compatible and while a recent survey shows adoption of IPv6 grew by 1,900 percent over the past 12 months that results in only about 25 percent of .com, .net, and .org Internet subdomains.

What is the status of the migration to IPv6 and what will it mean for Internet users and businesses, domestic and globally?

Answer. While universal IPv6 deployment is likely to obviate the need for IPv4 deployments in the long-term, the short and medium-term is likely to see Internet networks running both protocols side-by-side for years to come. As such, migration away from IPv4 is a less important goal than the widespread deployment of IPv6.

The status of IPv6 deployment can be measured both quantitatively and qualitatively. Quantitatively, over 7,500 IPv6 address blocks had been allocated to network operators around the globe by the end of September 2011<sup>28</sup> and by January 2012, the American Registry for Internet Numbers (ARIN) allocated IPv6 address blocks to over 2,300 networks in the USA<sup>29</sup> alone. Almost 6,700<sup>30</sup> IPv6 networks were publicly routed on the Internet in January 2012, which is approximately 17 percent<sup>31</sup> of Internet networks.

Qualitatively, IPv6 deployments have undergone testing and are now being made as part of ISPs and content providers’ standard services. World IPv6 Day<sup>32</sup> in June 2011 was a coordinated test of IPv6 by including Google, Facebook, Yahoo!, Akamai and Limelight Networks, together with over 1,000 website operators. It was a success, and June 6, 2012 will see the World IPv6 Launch, in which major ISPs, home networking equipment manufacturers and web companies around the world are coming together to permanently enable IPv6 for their products and services.

While June’s World IPv6 Launch is not a flag day, the combination of successful testing and market leading deployment is expected to provide an incentive to other Internet businesses and help raise awareness with non-Internet businesses. Some businesses may note that they need to update systems to allow for IPv6 deployment, though regular updating of systems to meet with technological advances is a normal cost of business. However, successful IPv6 deployment should be seamless for Internet users, whose computer operating systems have been IPv6 capable for some years already.

<sup>28</sup> [http://www.nro.net/wp-content/uploads/nro\\_stats\\_2011\\_q3.pdf](http://www.nro.net/wp-content/uploads/nro_stats_2011_q3.pdf).

<sup>29</sup> <ftp://ftp.arin.net/pub/stats/arin/>

<sup>30</sup> <http://www.cidr-report.org/v6/as6447/index.html>.

<sup>31</sup> <http://www.cidr-report.org/as2.0/>.

<sup>32</sup> <http://www.worldipv6day.org/>.

*Question 8.* Is there anything governments can do to encourage faster adoption of IPv6 as well as increase awareness to businesses and citizens about the migration?

Answer. From ICANN's perspective, public support for adoption of IPv6 can help increase awareness of the deployment of IPv6, as well as provide incentives for Internet-related businesses to engineer products that are capable of IPv6 deployment. For example, in 2005, the United States Office of Management and Budget (OMB) mandated<sup>33</sup> that Federal agencies initiate the transition to IPv6. The target readiness date was June 2008. In September 2010 the OMB released a further memorandum<sup>34</sup> setting out additional deadlines for the Federal IPv6 transition. Other national governments have introduced similar roadmaps. Examples include Australia's 2009 Strategy for the Implementation of IPv6 in Australian Government Agencies<sup>35</sup> and the European Commission's Action Plan for the deployment of Internet Protocol version 6 (IPv6) in Europe.<sup>36</sup> The latter has guided deployment in governments throughout Europe, including Germany.<sup>37</sup>

Mandates such as OMB's 2005 timeline have helped establish demand for IPv6 feature sets, as customers now require those features in equipment purchases. As such, governments have contributed to the success of World IPv6 Day in 2011, which readied the stage for this year's World IPv6 Launch.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO  
ANGELA WILLIAMS

*United Nations Model*

*Question 1.* There has been a growing contingency of other countries critical of the ICANN multi-stakeholder model and about the US' involvement and influence with ICANN. Some governments, not necessarily friendly to the U.S., are seeking to increase their power over the Internet and its governance.

Russia and China (with Tajikistan and Uzbekistan) have proposed to the United Nations an Internet "Code of Conduct," which a senior State Department official stated "they seek to justify the establishment of sovereign government control over Internet resources and over freedom of expression in order to maintain the security of their state."<sup>1</sup> Even Russian Prime Minister Vladimir Putin remarked recently his desire of "establishing international control over the Internet using the monitoring and supervisory capabilities of the International Telecommunication Union (ITU)."<sup>2</sup>

The other proposal by India, Brazil and South Africa calls for the creation of a new body within the United Nations to oversee Internet policy. As a result, ICANN as well as the Internet Governance Forum (IGF) could be significantly marginalized or hijacked by this new UN entity.

These proposals seem to be in direct conflict with our Nation's effort to privatize the Internet through transferring the authority of the DNS to the private sector and for the Internet governance model to be private-sector led.

If the U.S. Government followed the advice to unilaterally delay the gTLD expansion, what do you believe the impact would be globally and do you believe this would fan the flames of anti-U.S. government sentiment with respect to Internet governance? Could it give more momentum to other governments' calls to have the United Nations assert oversight over ICANN or replace it altogether?

Answer. The YMCA of the USA ("Y-USA") did not enter testimony requesting that ICANN delay its new gTLD Program. Our testimony primarily focused on the financial impact the new gTLD Program would have on the not-for-profit sector. It is hard for us to predict what the global impact would be or whether it would give other countries momentum to call for the United Nation's involvement in Internet governance if the new gTLD Program were to be delayed. Nevertheless, ICANN's irresponsible launch of the new gTLD Program with an implementation plan that does not adequately address consumer protection or the financial burdens for our organizations could have a negative impact on the not-for-profit sector. Further, we suspect that anti-government sentiments will continue to be prevalent regardless of ICANN's decision.

<sup>33</sup> [http://www.cio.gov/documents/Transition\\_Planning\\_for\\_IPv6.pdf](http://www.cio.gov/documents/Transition_Planning_for_IPv6.pdf).

<sup>34</sup> <http://www.cio.gov/Documents/IPv6MemoFINAL.pdf>.

<sup>35</sup> [http://www.finance.gov.au/e-government/infrastructure/docs/Endorsed\\_Strategy\\_for\\_the\\_Transition\\_to\\_IPv6\\_for\\_Australian\\_Government\\_agencies.pdf](http://www.finance.gov.au/e-government/infrastructure/docs/Endorsed_Strategy_for_the_Transition_to_IPv6_for_Australian_Government_agencies.pdf).

<sup>36</sup> [http://ec.europa.eu/information\\_society/policy/ipv6/docs/european\\_day/communication\\_final\\_27052008\\_en.pdf](http://ec.europa.eu/information_society/policy/ipv6/docs/european_day/communication_final_27052008_en.pdf).

<sup>37</sup> <http://ripe58.ripe.net/content/presentations/ipv6-in-germany.pdf>.

<sup>1</sup> [http://www.huffingtonpost.com/2011/09/27/russia-china-internet-control\\_n\\_984223.html](http://www.huffingtonpost.com/2011/09/27/russia-china-internet-control_n_984223.html).

<sup>2</sup> <http://premier.gov.ru/eng/events/news/15601/>.

*Question 2.* If the U.N. did take control or governments had greater involvement, what impact would that have on American businesses and citizens that utilizes the Internet? What impact could it have on Freedom of Speech?

Answer. Based on U.S. laws, American citizens, companies and not-for-profit organizations are able to fully engage in ecommerce, humanitarian and educational pursuits and commentary and free expression on the Internet. The Y-USA does not believe that ICANN's new gTLD Program will affect these protections. Furthermore, the Y-USA is unaware of any data, studies or research that analyze the potential effect the United Nations or government would have on businesses or citizens should they take control of the Internet.

*Growth of the Internet and expansion of the domain name system*

*Question 3.* The Internet has been so amazingly beneficial to small businesses because it allows them to globally expand their local markets and enables them to compete with Fortune 100 companies because the size of the computer screen is the same for a small business in Bangor as it is for a multi-national corporation like Wal-mart. [sic] Small businesses are the anchor to not only Maine's economy but to our Nation's and the Internet has been invaluable to them.

Supporters of the expansion have stated it will bring new competition and choice to the Internet space and allow the Internet to continue to grow in the number of websites, content, applications, and online services. It also presents businesses new models to harness the boundless benefits of the Internet.

There have already been expansions to top level domains in the past to accommodate for the growth of the Internet, with the intro of gTLDs like .biz, .info, .museum, .mobi, etc. Given that there have already been two expansions of top level domains, it seems difficult to simply state that there shouldn't be any additional top-level domains for the Internet. The Internet is all about expansion and innovation, after all. Are you really saying we already have all the top-level domains the Internet will ever need?

Answer. Y-USA did not enter testimony suggesting that the Internet should not be expanded. Again, our testimony primarily focused on the financial impact the new gTLD Program would have on the not-for-profit sector. It is our assertion that not-for-profits (for those that can afford to) should not be required to use the humanitarian contributions it receives to (1) change its business model to operate as a domain name registry; and/or (2) file countless defensive top level and second level domain name registrations to protect its intellectual property against cyber squatters seeking profit off their names.

*Question 4.* If the Internet is going to continue to grow shouldn't the domain name system?

Answer. The domain name system can grow, but in a way that protects businesses, and affords the not-for-profit sector meaningful input and access as global stakeholders.

*Question 5.* Putting aside your request for delay, are there specific improvements you would recommend in the gTLD program that would address your concerns?

Answer. Y-USA testified as a not-for-profit organization and as a member of ICANN's newly-formed Not-for-Profit Operational Concerns Constituency ("NPOC"). We did not request that the new gTLD Program be delayed. Instead we offered the following recommendations:

- That verified not-for-profit organizations be permitted to exempt their trademarks from any other applicant in the new gTLD program at no cost, or if that is not possible, then at a drastically reduced fee;
- That the mechanisms for trademark protection be significantly strengthened, with the ability to proactively protect trademark owners before any application is accepted; and
- That the costs to participate in the new gTLD program for verified not-for-profit organizations be eliminated.

*White Paper*

*Question 6.* In the "White Paper," which was released in 1998 and led to the formation of ICANN is competition, has as one of its core principles is competition—that competition and consumer choice should drive the management of the Internet because they will lower costs, promote innovation, encourage diversity, and enhance user choice and satisfaction.

Comments in the White Paper<sup>3</sup> on the issue of new generic top level domains showed “very strong support for limiting government involvement during the transition period on the matter of adding new gTLDs. Specifically, most commenters—both U.S. and non-U.S.—suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running.” Also, commenters noted that “there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution.” Isn’t the expansion of gTLD a form of competition, where .hotels or .cars could compete against .com or .biz? If not, why?

Answer. Y–USA is of the opinion that expansion of the gTLD program could be a form of healthy competition if there is a demonstrated need for the expansion and an articulated rationale supporting the scope of the expansion (*e.g.*, the number of new TLDs to be introduced). ICANN has estimated 200–1000 new gTLDs within the first launch phase. Rollouts of new gTLDs such as .biz, .mobi, etc., were staggered. Y–USA and we suspect many other not-for-profits and businesses, filed defensive domain name registrations during these expansions, rather than using the new domain names to support an innovative business plan, or to offer new content or services for our communities. For example, a new gTLD for “.xxx” was recently launched for the adult entertainment industry. We filed a defensive registration for “ymca.xxx” at the cost of \$300. Should there be a need for our organization and/or other not-for-profits organizations to file hundreds of defensive registrations with no plans to actually use them or incorporate them in our business plans, the costs and impact to do so could be staggering. Our sector not only prefers to, but must, use our monies to provide critical services to our communities.

*Question 7.* As stated the white paper highlighted that “most commenters—both U.S. and non-U.S.—suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running.” What has happened since the inception of ICANN that warrants the United States Government from ignoring these initially comments from U.S. and non-U.S. stakeholders that ICANN should decide the issue of new gTLDs?

Answer. Y–USA is not well versed in the nuances of the evolution of Internet governance.

*Question 8.* Several commenters also stated “the market will decide which TLDs succeed and which do not.” What is wrong with allowing the market to continue to decide with new gTLDs from the expansion?

Answer. Y–USA is in favor of the market deciding which new gTLDs will succeed. However, what concerns us are the costs for not-for-profits to participate in the expansion (including defending its intellectual property rights) of the Internet with humanitarian monies donated for our worthy causes. Unfortunately, not-for profit organizations will have to allocate financial and human resources to defend their brand and intellectual property early in the process and long before the market determines whether these new gTLDs are successful. Our sector not only prefers to, but must, use our monies to provide critical services to our communities.

*Question 9.* If commenters are correct that “there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution” then why should we place “artificial or arbitrary” limits on the Internet?

Answer. Y–USA does not favor restricting or limiting the internet. Again, what concerns us is the costs for not-for-profits to participate in the expansion (and defend its brand and intellectual property rights) of the Internet with humanitarian monies donated for our worthy causes. Unfortunately, expansion without limits will place not-for profit organizations in the position to allocate financial and human resources to defend their brand and intellectual property, well before these new top level domains are proven successful. For some new domains, if history is a predictor, most of the registrations for second level domain names will come from companies and organizations defensively registering their names.

---

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. MARIA CANTWELL TO  
DANIEL L. JAFFE

*Cracking down on rogue websites*

*Question.* Mr. Jaffe, do you believe that the increase in top level domains combined with all the requirements ICANN is putting in place will make its easier,

<sup>3</sup> <http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses>.

more difficult, or not change the ability of U.S. authorities to crack down on Internet sites—to use the phrase—that are dedicated to infringing activity?

Answer: We believe an unlimited expansion of the TLDs would make it much more difficult for U.S. authorities to crack down on “rogue” Internet sites. This is a serious challenge in today’s environment with 22 TLDs so an unlimited expansion would increase the problem exponentially. In 2009, an international coalition of law enforcement agencies including the U.S. Department of Justice and the FBI issued a set of 12 specific law enforcement recommendations to ICANN. None of those recommendations has been adopted. In a very detailed letter to ICANN dated December 16, 2011, the Federal Trade Commission (FTC) stated that the TLD expansion presented a “dramatically increased opportunity for consumer fraud, distribution of malware, and proliferation of other malicious activity. . .” The Commission made five specific recommendations to ICANN to address before any new TLDs are approved. We believe it is critical that ICANN fully implement the recommendations of the FTC and other law enforcement agencies from around the world.

---

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. CLAIRE MCCASKILL TO  
DANIEL L. JAFFE

*Question.* I recognize that ICANN has put a tremendous amount of work and study into the planned expansion of top-level domain names. There have been a number of economic studies, dozens of comment periods and seven versions of the Applicant Guidebook before the final one was issued. ICANN clearly views the expansion of gTLDs as vital to the growth and viability of the Internet.

Given how much time, effort and study has been put into this decision, I find it disturbing that there is still so much dispute about expansion. There is clearly a lack of consensus about these changes in the business and non-profit industries as well as concerns from law enforcement. This is not a decision to be taken lightly and I believe there needs to be better agreement on the outstanding issues from all interested parties.

Both of you have very differing opinions about the implications of the gTLD expansion. Why has it taken this long to get this out in the open?

Mr. Jaffe, there was an extensive comment period before the guidelines were issued, which I’m sure you were aware of—did you and other industries fully participate in the process? Do you disagree with the economic studies that ICANN has cited saying this would increase competition and innovation? If so, why?

Mr. Fritz, how much weight was given to the concerns raised by Mr. Jaffe and others with his viewpoints? The danger of increased copyright infringement appears to be a legitimate issue—do you agree?

Answer. ANA and many other business groups and companies have been actively participating in the ICANN process for several years. We filed detailed comments with ICANN in 2008 and 2009 expressing our serious concerns about the unlimited TLD expansion. Many companies have attended the numerous meetings around the world of the ICANN board to express similar concerns. Unfortunately, the strong objections raised by ANA and a very broad cross-section of the international business community have largely fallen on deaf ears with ICANN. We seriously challenge the economic analysis that has been put forward by ICANN. An unlimited expansion of the TLDs will cost the business community billions of dollars. The only voices speaking in favor of the expansion are registrars, registries and others who will directly profit from the roll-out. The broader Internet business community, including the 161 members of the Coalition for Responsible Internet Domain Oversight (CRIDO) is strongly opposed to the current program.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO  
DANIEL L. JAFFE

*United Nations Model*

*Question 1.* There has been a growing contingency of other countries critical of the ICANN multi-stakeholder model and about the US’ involvement and influence with ICANN. Some governments, not necessarily friendly to the U.S., are seeking to increase their power over the Internet and its governance.

Russia and China (with Tajikistan and Uzbekistan) have proposed to the United Nations an Internet “Code of Conduct,” which a senior State Department official stated “they seek to justify the establishment of sovereign government control over Internet resources and over freedom of expression in order to maintain the security

of their state.<sup>17</sup> Even Russian Prime Minister Vladimir Putin remarked recently his desire of “establishing international control over the Internet using the monitoring and supervisory capabilities of the International Telecommunication Union (ITU).<sup>28</sup>”

The other proposal by India, Brazil and South Africa calls for the creation of a new body within the United Nations to oversee Internet policy. As a result, ICANN as well as the Internet Governance Forum (IGF) could be significantly marginalized or hijacked by this new UN entity.

These proposals seem to be in direct conflict with our Nation’s effort to privatize the Internet through transferring the authority of the DNS to the private sector and for the Internet governance model to be private-sector led.

If the U.S. Government followed the advice to unilaterally delay the gTLD expansion, what do you believe the impact would be globally and do you believe this would fan the flames of anti-U.S. government sentiment with respect to Internet governance? Could it give more momentum to other governments’ calls to have the United Nations assert oversight over ICANN or replace it altogether?

Answer. We do not believe that a delay in the TLD expansion or a pilot project involving a smaller number of new TLDs would have negative implications for the role of ICANN in Internet governance. Indeed, given the serious concerns that have been expressed by the international law enforcement community, more than 30 IGOs and a broad cross-section of the international business community, it would be a reckless experiment for ICANN to proceed full speed ahead with the unlimited expansion. A failed and costly program that hurts both consumers and businesses could drastically undermine the foundations of ICANN and its supervisory role over TLDs.

*Question 2.* If the U.N. did take control or governments had greater involvement, what impact would that have on American businesses and citizens that utilize the Internet? What impact could it have on Freedom of Speech?

Answer. We do not advocate that the U.S. government or any other government control the Internet. We also do not seek the abolition of ICANN. A private sector led multi-stakeholder process that truly achieves consensus will result in an online environment that encourages creativity and innovation for all the citizens of the world. Unfortunately, we do not believe that these goals have been fostered by ICANN’s current TLD program.

#### *Self-Regulation vs. Government Intervention*

*Question 3.* In a letter and petition, submitted by the Association of National Advertisers and other organizations to Commerce Secretary Bryson, on November 10, 2011, you express your “strong opposition to the new Top Level Domain (TLD) program that was approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on June 20, 2011.” The petition then calls for the Department of Commerce and NTIA to use all of its best efforts to persuade ICANN to postpone the opening of the Top Level Domain application window. The ANA and the other petitioners are basically calling for the government intervention.

However, in comments the filed, in June 2010, with respect to the Department of Commerce’s Notice of Inquiry on information privacy and innovation in the Internet economy, ANA and some of the same organizations that voiced for government intervention on ICANN, praised the virtues of self-regulation and that “existing and emerging robust self-regulatory principles address privacy concerns while ensuring that the Internet can thrive, thereby benefiting consumers and the U.S. economy.” The petition went on to state that self-regulation ensures “the marketplace is not stifled or smothered by overreaching and rigid regulation.” So you all are warning against government intervention with respect to online privacy.

These petitions seem in direct conflict with each other—on one issue you want the government to intervene but on another you don’t. Can you provide clarity as to why this is because it doesn’t seem consistent?

Answer. We do not believe that industry self-regulation and reasonable regulation by the government in certain areas are mutually exclusive. For example, in the privacy arena, we have always agreed that there are certain sensitive areas (health and financial information and children) where there is a legitimate interest for reasonable government regulation. Thus, we have supported the privacy regimes of Gramm-Leach-Bliley, HIPPA and the Children’s Online Privacy Protection Act (COPPA). However, for non-sensitive information, we continue to believe that the privacy interests of consumers can be best protected through strong, effective industry self-regulation. For that reason, we were one of the founding partners of the Self-Regulatory Program for Online Behavioral Advertising (OBA).

<sup>1</sup> [http://www.huffingtonpost.com/2011/09/27/russia-china-internet-control\\_n\\_984223.html](http://www.huffingtonpost.com/2011/09/27/russia-china-internet-control_n_984223.html).

<sup>2</sup> <http://premier.gov.ru/eng/events/news/15601/>.

With regard to ICANN, we have never sought direct government intervention by the Department of Commerce. We support the role that ICANN plays as part of a multi-stakeholder approach. However, it is critical that the various requirements regarding the public interest, consumer trust and public benefits that are contained in the Affirmation of Commitments between ICANN and the Department of Commerce are being adequately fulfilled. ICANN was provided authority over key functions of the Internet under the Affirmation of Commitments with the Department of Commerce. If ICANN fails to uphold these commitments, then the DOC must provide assurance that the legitimate concerns of businesses and consumers will be met.

*Question 4.* Do you believe this intervention you request is counter to the “Framework for Global Electronic Commerce” working paper, which its first principle is “the private sector should lead” and that “governments should encourage industry self-regulation wherever appropriate and support the efforts of private sector organizations to develop mechanisms to facilitate the successful operation of the Internet?”

This intervention also seems in direct conflict with the Commerce Department’s Commitments in the Affirmation of Commitments (AoC), where it is written the Commerce Department “affirms its commitment to a multi-stakeholder, private sector led, bottom-up policy development model.” Could Commerce’s involvement in delaying the gTLD expansion be perceived as renegeing on this commitment within the AoC?

Answer. We do not believe that our request to the Department of Commerce is inconsistent with either the “Framework for Global Electronic Commerce” or the Affirmation of Commitments. We do not advocate that the U.S. government or any government control the Internet. However, that does not mean that the Commerce Department has no role to play in the broad governance of the Internet. Indeed, as a member of ICANN’s Governmental Advisory Committee (GAC), the Commerce Department is a vital part of the multi-stakeholder global community. In addition, ICANN made a number of specific promises in the Affirmation of Commitments between ICANN and the NTIA, in exchange for the considerable power to oversee the Internet that was delegated to ICANN by the U.S. government. It has become very clear over the last several months that the process followed by ICANN on the TLD proposal has not achieved consensus among all of the stakeholders. If ICANN is to maintain the trust in its ability to act for the public benefit that is critical to its continued success as a private, not-for-profit Internet governance body, the Commerce Department has a vital role to play to protect the interest of American consumers and businesses.

*Growth of the Internet and expansion of the domain name system*

*Question 5.* The Internet has been so amazingly beneficial to small businesses because it allows them to globally expand their local markets and enables them to compete with Fortune 100 companies because the size of the computer screen is the same for a small business in Bangor as it is for a multi-national corporation like Wall-mart. Small businesses are the anchor to not only Maine’s economy but to our Nation’s and the Internet has been invaluable to them.

Supporters of the expansion have stated it will bring new competition and choice to the Internet space and allow the Internet to continue to grow in the number of websites, content, applications, and online services. It also presents businesses new models to harness the boundless benefits of the Internet.

There have already been expansions to top level domains in the past to accommodate for the growth of the Internet, with the intro of gTLDs like .biz, .info, .museum, .mobi, etc.

Given that there have already been two expansions of top level domains, it seems difficult to simply state that there shouldn’t be any additional top-level domains for the Internet. The Internet is all about expansion and innovation, after all. Are you really saying we already have all the top-level domains the Internet will ever need?

Answer. We have never said that there is something sacrosanct about maintaining the existing 22 TLDs unaltered. However, it has become clear over the past several months that there is serious opposition to the unlimited expansion that ICANN has proposed. That opposition comes not just from the business community, but also from law enforcement and consumer protections agencies, IGOs, and the non-profit community.

Furthermore, the proposed added protections that ICANN states will provide protection for the Top Level Domain system have never been tested in a pilot project. It is reckless to have such a broad expansion of the Domain Name System without this more limited test.

*Question 6.* If the Internet is going to continue to grow shouldn’t the domain name system?

Answer. There is no scarcity of space within the existing domain name system, so the ICANN program seems to be a solution in search of a problem. Most of the current TLD names are minimally used, but brand owners nevertheless spend millions of dollars policing them to protect against trademark dilution, cybersquatting and the online sale of pirated or counterfeit products. Those costs and dangers would expand exponentially under the ICANN program. The broad Internet business community is not calling for this unlimited expansion. The expansion of domains should be based on a careful analysis of costs and benefits, and we do not believe that ICANN's analysis has been adequate to date.

*Question 7.* Putting aside your request for delay, are there specific improvements you would recommend in the gTLD program that would address your concerns?

Answer. In a very detailed letter to ICANN dated December 16, 2011, the Federal Trade Commission (FTC) stated that the TLD expansion presented a “dramatically increased opportunity for consumer fraud, distribution of malware, and proliferation of other malicious activity. . . .” The Commission made five specific recommendations for ICANN to responsibly address before any new TLD applications are approved. The FTC letter is available at: [www.ftc.gov/os/closings/publicltrs/111216letter-to-icann.pdf](http://www.ftc.gov/os/closings/publicltrs/111216letter-to-icann.pdf).

We believe it is critical that ICANN fully implements the consumer protection recommendations of the FTC. ANA recently wrote to Assistant Secretary Lawrence Strickling at the NTIA, urging the Commerce Department to ensure that ICANN adopts those recommendations. We believe it is critical that NTIA play a more proactive role in this area by providing specific timetables and benchmarks for ICANN to meet as well as specific consequences if they fall short. We also have recommended a “Do Not Sell” list that would allow companies to temporarily protect their trademarks from registration without paying registration fees. A copy of our letter is attached for your information.

#### *White Paper*

*Question 8.* In the “White Paper,” which was released in 1998 and led to the formation of ICANN is competition, has as one of its core principles is competition—that competition and consumer choice should drive the management of the Internet because they will lower costs, promote innovation, encourage diversity, and enhance user choice and satisfaction.

Comments in the White Paper<sup>3</sup> on the issue of new generic top level domains showed “very strong support for limiting government involvement during the transition period on the matter of adding new gTLDs. Specifically, most commenters—both U.S. and non-U.S.—suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running.” Also, commenters noted that “there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution.”

Isn't the expansion of gTLD a form of competition, where .hotels or .cars could compete against .com or .biz? If not, why?

Answer. ANA's member companies operate in very competitive markets and strongly support free, fair and open competition. There may be situations where individual companies or a specific industry (such as the hotel or automobile industry) decide there are significant benefits to be gained through new TLDs. However, that is not the case we have with the current ICANN program. Rather than a targeted or limited expansion based on specific demand from companies or industries or consumers, ICANN has decided to embark on a veritable names rush, an unlimited expansion that will impose enormous costs on brand owners.

*Question 9.* As stated the white paper highlighted that “most commenters—both U.S. and non-U.S.—suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running.” What has happened since the inception of ICANN that warrants the United States Government from ignoring these initially comments from U.S. and non-U.S. stakeholders that ICANN should decide the issue of new gTLDs?

Answer. We agree that the decision about expanding TLDs must ultimately be made by ICANN. However, the decision-making process must be fair, open and impartial and consistent with the promises ICANN has made with the Department of Commerce in the Affirmation of Commitments. ICANN has been considering this program for several years, but has largely ignored the serious concerns expressed by the business community as well as the international law enforcement community

<sup>3</sup> <http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses>.

during that time period. Even now, after two Congressional hearings and a growing chorus of opposition from across the Internet community, ICANN's response is "pay now and trust us to make changes later." There must be some mechanism to hold ICANN accountable and NTIA and the other members of the Governmental Advisory Committee must occupy that role.

*Question 10.* Several commenters also stated "the market will decide which TLDs succeed and which do not." What is wrong with allowing the market to continue to decide with new gTLDs from the expansion?

Answer. If ICANN's program was likely to enhance competition and expand the Internet marketplace, you would expect broad statements of support for it from multiple stakeholders. That is most certainly not the case here. The more scrutiny it has received, the more groups have strongly concluded that the program is not ready to be rolled out. This program has multi-billion dollar implications for all marketers and consumers. For example, in a December 16, 2011 letter to ICANN, the Federal Trade Commission (FTC) noted that ICANN has failed for over a decade to address serious issues with the WHOIS database, which is critical to protecting consumers in cyberspace. The Commission also noted the serious conflict of interest issues that have been raised about ICANN's vote to approve the TLD expansion. Those issues raise fundamental concerns about whether the program is truly a fair and open marketplace.

*Question 11.* If commenters are correct that "there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution" then why should we place "artificial or arbitrary" limits on the Internet?

Answer. The unlimited expansion of TLDs would dramatically increase the cost and complexity for trademark holders to protect their rights. The immediate cost imposed on businesses is likely to be in the billions of dollars. Applying for a new Top Level Domain name will require an extraordinarily expensive registration fee of \$185,000 as well as a minimum cost of \$25,000 paid annually to ICANN over the ten-year contractual commitment that successful applicants must make. Costs will further escalate at the second level of naming—the word to the left of the "dot"—as brand owners will have to consider registering each of their brand-related terms, for either commercial or defensive purposes.

Some have estimated that, for a typical company, the cost of acquiring a single gTLD and managing it over the initial commitment of ten years could easily exceed \$2 million, including expenses for the application process, operations, disputes, and related legal services. The costs associated with trademark monitoring and protection in all the new gTLD spaces will run even higher. Some members of ANA and the Coalition for Responsible Internet Domain oversight (CRIDO) spend over \$1 million a year today to enforce against cybersquatting and fraud in the existing 22 gTLD spaces. These numbers will clearly escalate if ICANN's proposal goes forward. In addition, many companies may face an auction for a generic Topic Level Domain, which will result in higher costs to ICANN's benefit. Many companies have hundreds or even thousands of brands to defend. Brand owners will face a Hobson's choice of either being compelled to spend substantial resources to acquire and manage new gTLDs or risk the harm to their brands that could occur if they take no action. This has certainly been the message spoken loud and clear to us from our members and the many groups within CRIDO.

---

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. MARIA CANTWELL TO  
ESTHER DYSON

*Cracking down on rogue websites*

*Question.* Ms. Dyson, do you believe that the increase in top level domains combined with all the requirements ICANN is putting in place will make it easier, more difficult, or not change the ability of U.S. authorities to crack down on Internet sites—to use the phrase—that are dedicated to infringing activity?

Answer. I believe that the increase in volume is likely to make the task more difficult and reduce the US's ability to effectively stop illegal activity because it will be easier to create and exploit new websites . . . and consumers are likely to be even more confused than now when they try to figure out what's legitimate and what's not. Unfortunately, ICANN does not have a very good record of properly enforcing its own requirements, so I'm not inclined to believe its promises as the opportunities for abuse proliferate.

*United Nations Model*

*Question 1.* There has been a growing contingency of other countries critical of the ICANN multi-stakeholder model and about the US' involvement and influence with ICANN. Some governments, not necessarily friendly to the U.S., are seeking to increase their power over the Internet and its governance.

Russia and China (with Tajikistan and Uzbekistan) have proposed to the United Nations an Internet "Code of Conduct," which a senior State Department official stated "they seek to justify the establishment of sovereign government control over Internet resources and over freedom of expression in order to maintain the security of their state."<sup>1</sup> Even Russian Prime Minister Vladimir Putin remarked recently his desire of "establishing international control over the Internet using the monitoring and supervisory capabilities of the International Telecommunication Union (ITU)."<sup>2</sup>

The other proposal by India, Brazil and South Africa calls for the creation of a new body within the United Nations to oversee Internet policy. As a result, ICANN as well as the Internet Governance Forum (IGF) could be significantly marginalized or hijacked by this new UN entity.

These proposals seem to be in direct conflict with our Nation's effort to privatize the Internet through transferring the authority of the DNS to the private sector and for the Internet governance model to be private-sector led.

If the U.S. Government followed the advice to unilaterally delay the gTLD expansion, what do you believe the impact would be globally and do you believe this would fan the flames of anti-U.S. government sentiment with respect to Internet governance? Could it give more momentum to other governments' calls to have the United Nations assert oversight over ICANN or replace it altogether?

Answer. Basically, it is up to ICANN itself whether to delay the GTLD expansion. If they do it the right way—genuinely soliciting input from all over the world—then I think that would in fact reduce other governments' standing to take over ICANN. It needs to reach out beyond governments and domain-name interests to see whether the public itself wants new domain names. . . and make sure its board represents those diverse interests.

*Question 2.* If the U.N. did take control or governments had greater involvement, what impact would that have on American businesses and citizens that utilize the Internet? What impact could it have on Freedom of Speech?

Answer. It's hard to predict exactly, but I think it would be likely to reduce freedom of speech and freedom of association in general.

*Growth of the Internet and expansion of the domain name system*

*Question 3.* The Internet has been so amazingly beneficial to small businesses because it allows them to globally expand their local markets and enables them to compete with Fortune 100 companies because the size of the computer screen is the same for a small business in Bangor as it is for a multi-national corporation like Wall-mart. Small businesses are the anchor to not only Maine's economy but to our Nation's and the Internet has been invaluable to them.

Supporters of the expansion have stated it will bring new competition and choice to the Internet space and allow the Internet to continue to grow in the number of websites, content, applications, and online services. It also presents businesses new models to harness the boundless benefits of the Internet.

There have already been expansions to top level domains in the past to accommodate for the growth of the Internet, with the intro of gTLDs like .biz, .info, .museum, .mobi, etc.

Given that there have already been two expansions of top level domains, it seems difficult to simply state that there shouldn't be any additional top-level domains for the Internet. The Internet is all about expansion and innovation, after all. Are you really saying we already have all the top-level domains the Internet will ever need?

Answer. In extremis, any new name you can dream up—such as ANYNAME—can either be represented as ANYNAME.com or it's redundant to an existing ANYNAME.com. If you actually look at most of what's in the new TLDs, you will find huge amounts of redundancy and conflicts. Most companies I talk to register their names in .com, .net, .org and a variety of other TLDs. . . . So, again, it's redundancy rather than expansion.

<sup>1</sup> [http://www.huffingtonpost.com/2011/09/27/russia-china-internet-control\\_n\\_984223.html](http://www.huffingtonpost.com/2011/09/27/russia-china-internet-control_n_984223.html).

<sup>2</sup> <http://premier.gov.ru/eng/events/news/15601/>.

And meanwhile, any new business model can work with the existing domain name system. . . . Such as all the names that come after the slash as in `twitter.com/edyson`.

*Question 4.* If the Internet is going to continue to grow shouldn't the domain name system?

Answer. It can expand within the current structure. The shortage is not of domain names; it's of space in people's heads to remember all the names.

*Question 5.* Putting aside your request for delay, are there specific improvements you would recommend in the gTLD program that would address your concerns?

Answer. The obvious answer is stronger upfront protection for trademarks, but all this will come at tremendous legal cost with very few benefits. And of course, more attention to the legal protections suggested by CRIDO and actual enforcement of ICANN's requirements. And finally, a change in who is represented on ICANN's board and other decision-making bodies.

#### *White Paper*

*Question 6.* In the "White Paper," which was released in 1998 and led to the formation of ICANN is competition, has as one of its core principles is competition—that competition and consumer choice should drive the management of the Internet because they will lower costs, promote innovation, encourage diversity, and enhance user choice and satisfaction.

Comments in the White Paper<sup>3</sup> on the issue of new generic top level domains showed "very strong support for limiting government involvement during the transition period on the matter of adding new gTLDs. Specifically, most commenters—both U.S. and non-U.S.—suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running." Also, commenters noted that "there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution."

Isn't the expansion of gTLD a form of competition, where `.hotels` or `.cars` could compete against `.com` or `.biz`? If not, why?

Answer. In theory it is, but in practice it is more a way of eroding the value of existing names.

*Question 7.* As stated the white paper highlighted that "most commenters—both U.S. and non-U.S.—suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running." What has happened since the inception of ICANN that warrants the United States Government from ignoring these initially comments from U.S. and non-U.S. stakeholders that ICANN should decide the issue of new gTLDs?

Answer. Yes, I do think it's appropriate for ICANN to make these decisions, but they should consider the public interest more thoroughly when they do so. As it is, the major benefits will go to insiders—people in the business of selling and managing domain names—rather than to the owners or users of the names.

*Question 8.* Several commenters also stated "the market will decide which TLDs succeed and which do not." What is wrong with allowing the market to continue to decide with new gTLDs from the expansion?

Answer. In principle, there's nothing wrong with this . . . but the domain-name market seems stacked to the benefit of insiders. The reality is that there is no competition for ICANN itself. That's not necessarily a problem, but it means that ICANN and the entities that control it should be held to a high standard of accountability to the public interest.

*Question 9.* If commenters are correct that "there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution" then why should we place "artificial or arbitrary" limits on the Internet?

Answer. Because the benefits of the expansion go to third parties rather than to the participants. De facto, ICANN and its stakeholders are creating dilutive property rights out of thin air and then auctioning many of them to the highest bidders.

<sup>3</sup> <http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses>.

NAME.SPACE, INC.  
New York, NY

Thank you this opportunity to present the views of Name.Space and its board of directors to the Committee on Commerce's hearing on ICANN and the expansion of Top Level Domains.

I am Paul Garrin, the founder of Name.Space, a first mover in the Internet Top Level Domain registry field, working to bring our original generic TLDs to market since 1996, predating ICANN by two years.

Name.Space recognizes the concerns of intellectual property holders, and we believe that we have a constructive and workable solution for policy and practice that will satisfy all parties, and welcome this opportunity to present our views to the Committee on Commerce at this December 8, 2011 hearing.

This testimony is intended to serve the Committee members and parties concerned about the positive impact of new generic Top Level Domains by raising awareness of our position and vision for a constructive approach to bringing generic Top Level Domains to market in a way that protects intellectual property owners, and creates new opportunities for branding, consumer choice and confidence, and free expression.

Historically, the commercialization of the Domain Name System has been plagued with ill-will. Cyber-squatting, domain name speculation, and fraud cost legitimate publishers, content creators, and brand owners millions of dollars in settling disputes, paying inflated prices from domain auctioneers and speculators, and in defensive domain name registrations. There are many conditions that led to this cascade of malfeasance resulting in defensive actions, un-budgeted costs, and damages to intellectual property and brand owners, and consumers. Foremost, is the lack of competition in the commercial TLD registry space. The incumbent registries, through their aggressive practices have done nothing but fuel the feeding frenzy on unmitigated domain name speculation in order to maximize their profits without regard to the negative consequences against brand owners and the overall utility of the DNS. ICANN's own policies only partially address brand protection through the (optional) sunrise period that precedes the launch of a new gTLD to the general public, and the trademark and brand clearing house.

Name.Space, in its year 2000 application to ICANN, presented its policy and business practices that we believe are the most equitable in protecting the interests of intellectual property and brand owners, and free speech. Our business model is based not on exuberance over a particular string, but on a balanced portfolio of gTLDs that represents opportunities to create strong new brands, essential for new businesses and products, as well as for less popular community, cultural, and free expression purposes. Our model establishes an economy of scale that supports both commercially valuable gTLDs, and less-profitable gTLDs that serve smaller communities, and free expression, at a stable and affordable price point.

In the upcoming 2012 gTLD round, Name.Space will re-assert its policies and responsible business practices for the fair delegation of domain names under its gTLDs, as well as work with IP interests and ICANN to develop new methods that better serve the proactive and preemptive protections necessary for the protection of intellectual property and brands in all of the gTLDs that we own and operate.

Some of Name.Space's IP protections include:

- (1) Registered trademark name clearing house and preemptive famous names filter.
- (2) Sunrise period reserved for registered brands and intellectual property at a fixed wholesale cost.
- (3) Whois "lockout" that prevents registered brands from becoming available to the general public.
- (4) Wholesale registrar access with volume discounts to associations who serve intellectual property constituents.
- (5) Full cooperation with organizations such as the ANA, IPO, WIPO, INTA, MPAA, and others to develop technologies, policies, and business practices for operating our gTLDs that protect existing brands, and develop new opportunities to use gTLDs to create strong new brands, and to present owners with innovative ways to protect and serve their content online.
- (6) Restrictions on registering domain names for the sole purpose of resale.

Name.Space had applied for 118 of its original generic Top Level Domains (including such gTLDs as .ART, .BOOKS, .MUSIC, .NOW, .SHOP, .SPACE, .SUCKS) in the first gTLD round held by ICANN in 2000. Although our application was accepted under ICANN's rules, and selected in the top 10 picks of "strong candidates", it

was not advanced toward delegation, and thus remains pending. Our year 2000 ICANN application had the support of then Chair Esther Dyson, who stated that Name.Space represents diversity, free speech, and is likely to be a successful business that supports both commerce and free expression.

Name.Space, whose business has a potential value of over 1 billion dollars, has been deprived the opportunity to fully launch and operate its portfolio of gTLD properties under what we believe is the most responsible, fair, and ethical practices yet to be employed in the commercial domain name industry. ICANN's approval of Name.Space's gTLDs will increase competition and diversity in the TLD registry space, and assure that our exemplary practices will best serve the public by providing the new gTLDs and the opportunities they present for new brands, small businesses, individual publishers and content creators, and for all owners of content libraries and new services in all media. The Internet is evolving and new gTLDs are an essential part of Internet infrastructure, and its evolution.

The 2012 ICANN round is the first opportunity for gTLD selection since 2000, and we have very patiently been waiting for this time to arrive so that our business can reach its full potential. We don't believe that our responsible and ethical approach to operating our gTLDs will harm intellectual property and brand owners, but will in fact protect them and offer new opportunities. Any further delay in launching our business will do nothing but cause further distress to my struggling business, and prevent us from creating jobs and contributing to the economy. We ask that there be no delay in the ICANN 2012 gTLD round, and that ICANN honor our year 2000 application for the portfolio of gTLDs that Name.Space originated since

1996, operated in commerce, and that we reserve our rights to. Name.Space is committed to the principles and practices stated here, and we believe that our gTLD policies are fair and exemplary, and welcome the cooperation of ICANN and the intellectual property associations to work with us in the most constructive and reasonable way so that our gTLDs become available on the global Internet without further delay.

I look forward to questions from the members of this committee, and to the beginning of a constructive dialogue with constituencies affected by the introduction of new gTLDs to the global Internet.

Sincerely,

PAUL GARRIN,  
*Founder,*  
Name.Space.

#### APPENDIX:

Name.Space has testimony on the record from hearings held by both Senate and House Commerce Committees on the subject of Top Level Domains submitted between 1997–2001. Name.Space is an early advocate of the shared registry system, and an advocate of a neutral non-profit organization to oversee the framework for introducing new gTLDs to the Internet, and was a participant in the IFWP process from which ICANN emerged.

#### **Brief history:**

1996—Name.Space launched real time domain name registry service publishing its original generic TLDs

1997—March 11, Name.Space requested Network Solutions add our gTLD data to the global root.zone file.

1997—March 12, Network Solutions refuses to add our gTLDs to root.zone

1997—March 20, Name.Space files antitrust suit against Network Solutions in Federal Court, Southern District NY

1997—September 25 House Commerce Committee hearing on Internet Domains Pt 1 (Name.Space testimony on record)

1997—September 30 House Commerce Committee hearing on Internet Domains Pt 2 (Name.Space testimony on record)

1997—National Science Foundation joined to lawsuit on First Amendment grounds

1998—Commerce Dept. NTIA releases “Green Paper” (Name.Space comments on record)

1998—Commerce Dept. NTIA releases “White Paper” (Name.Space comments on record)

1998—Commerce Dept. NTIA IFWP process (Name.Space participates)

1998—NTIA takes over contract between NSF and NSI, and amends it (amendment 11)

1998—Commerce Dept. NTIA contracts Internet Corporation for Assigned Names and Numbers

1999—NTIA creates separation of TLD “registry” (wholesale) and domain name “registrar” (retail) using shared registry system. Prices drop from \$100 per 2 year registration to \$30 per year.

1999—ICANN accredits 30 companies to serve as domain name registrars (reselling .COM); Name.Space accredited

2000—February, Second Circuit Court of Appeals decision—immunity for Network Solutions

2000—November—Name.Space participates in ICANN gTLD round, submits 118 gTLDs, pays \$50,000 application fee; is picked in top 10 strong applicants; support from chair Esther Dyson, opposed by other board members; application unresolved, still pending. \*several ICANN board members recused themselves in connection with TLD applications that were selected.

2001—February 8 House Commerce Committee ICANN hearing (Name.Space testimony on record)

2001—February 14 Senate Commerce Committee ICANN hearing (Name.Space testimony on record)

2000—Present—Name.Space business severely impacted by non-global access for its gTLDs, struggles to stay afloat. New investment enables us to participate in the 2012 round with our standing application from 2000.

#### **Links to view video from ICANN’s 2000 gTLD round:**

Paul Garrin presents Name.Space to ICANN board, answers board’s questions (Nov. 15, 2000): <http://replace.tv/vid/2000-icann1115-pg-presents.mov> (approx. 8 min.)

ICANN board (sans recused members) discusses the Name.Space gTLD application: <http://replace.tv/vid/2000-icann1116-pt02-ns-discussion.mov> (approx. 28 min.)

#### **For more information, history, press highlights links, please see:**

<http://about.namespace.org>.

#### **Select press links:**

<http://www.nytimes.com/library/cyber/week/032297domain.html> (Name.Space formerly known as PGP Media) <http://timeto.freethenet/pg/media/washpost19970706.txt>

<http://news.cnet.com/2100-1023-203408.html> (Name.Space formerly known as PG Media)

<http://timeto.freethenet/pg/media/dot-monopoly1.jpg> <http://timeto.freethenet/pg/media/dot-monopoly2.jpg>

<http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2000/12/03/BU113071.DTL>

[http://www.thevillager.com/villager\\_314/thebattleofnyc.html](http://www.thevillager.com/villager_314/thebattleofnyc.html)

#### **Attachments:**

- (1) Name.Space ICANN application from the 2000 gTLD round
  - (2) Questions and answers from ICANN to Name.Space on the 2000 application
  - (3) Name.Space business plan (2000 version as submitted to ICANN)
- [Attachments not inserted into the record.]

ICANN  
14 December 2011

At-Large Advisory Committee

Att:

Hon. John D. (Jay) Rockefeller IV,  
Chairman, Senate Committee on Commerce, Science, and Transportation  
United States Senate,  
Washington, DC.

Dear Chairman Rockefeller,

We are following up on the discussions which took place during the 8 December 2011 hearing of the United States Senate Committee on Commerce, Science and Transportation about ICANN’s expansion of generic Top Level Domains.

As current chairs of ICANN’s At-Large Advisory Committee (ALAC) and North American Regional At-Large Organization (NARALO), we found Ms. Esther Dyson’s description of the ALAC circa 2003 extremely out-of-date. Her testimony depicted the ALAC prior to the establishment of the five Regional At-Large Organizations

(RALOs) which are designed to provide a structured input first to the ALAC and then to ICANN from Internet end-users around the world. However, we fully support her overall message for the public to pay attention to the workings of ICANN, and that ICANN's door is open.

Today, the ALAC is able to comment on any aspect of the new gTLD program, which it has on several occasions, as well as any other program or process at ICANN. It carries much more "weight" within ICANN's multi-stakeholder, bottom-up model, than it had in the past, thanks to the hard, relentless work of many end-user volunteers who are fighting in the "trenches" to bring the public interest to the ICANN table. We have nearly 140 At-Large Structures (acronym ALS—any formal commercial or non commercial organization having established a process to collect member input at a country level, whether a local non-profit computer club, or a charity bringing computing to the disadvantaged) worldwide and are increasing our membership on a monthly basis.

We believe it is the duty of ICANN, and of the ALAC, to impress upon legislators and the Executive Branch in all countries that the touchstone of future Internet development is, and should remain, in the public interest. In parallel, we wish to draw the attention of legislators in the United States to the fact that, because their conclusions and choices regarding the Internet have the potential to affect Internet end-users elsewhere, United States' initiatives and laws should seek to be compatible with the public interest internationally.

Active At-Large members cannot purport to "represent" the 2.1 billion global Internet users, but they can try to act in what they honestly believe is in the best interests of the Internet's end users. Do we have enough members? Probably not—our aim is to have at least one At-Large Structure (ALS) in every country around the world. We need more volunteers. We need more input from global Internet end-users.

The vehicle for this input is here. It is already used and has produced dozens of statements every year, which you and your honorable colleagues can consult on: <http://www.atlarge.icann.org/correspondence>

However, this vehicle needs to be more advertised. We are doing our part to raise awareness of ALAC and the issues of interest to global Internet end-users.

We ask that you share the information of this vehicle as outlined above with your colleagues.

Yours sincerely,

BEAU BRENDLER, *Chair*,  
*North American Regional At-Large Organization (NARALO)*,  
<http://www.naralo.org/> Yonkers, New York.  
 DR. OLIVIER MJ CRÉPIN-LEBLOND, *Chair*,  
*At-Large Advisory Committee*,  
<http://www.alac.icann.org/> London, UK.

---

COUNCIL OF BETTER BUSINESS BUREAUS, INC.  
*December 8, 2011*

Hon. JAY ROCKEFELLER IV,  
 Hon. KAY BAILEY HUTCHINSON,  
 Committee on Commerce, Science, and Transportation,  
 United States Senate,  
 Washington, DC.

Dear Chairman Rockefeller and Senator Hutchinson:

The Council of Better Business Bureaus (CBBB) would like to thank you for holding a hearing on the important topic of Internet domain expansion.

CBBB concurs with the concerns expressed by the Association of National Advertisers and the nonprofit constituency of the Internet Corporation for Assigned Names and Numbers (ICANN). Currently, there is insufficient control over the rampant crime that takes place via the Internet in the form of pirating of intellectual property, identity theft, phishing scams and other types of brand infringement and consumer fraud. CBBB and its constituents—small and medium business, nonprofits and consumers—are victimized by Internet crime on a daily basis.

Before ICANN undertakes a mass expansion of potential websites, it needs to come up with a workable solution, in conjunction with international crime fighting organizations and victims of crime, to improve the ability of law enforcement to track and shut down illicit activities on currently registered Internet websites.

As a not-for-profit trade association with famous and well-recognized trademarks, CBBB has to devote considerable resources to tracking and taking action against illicit use of its trademarks on the Internet. We also have to spend scarce financial resources each year purchasing domain names in all of the different top level domains corresponding to all of our trademarks and programs to keep illegitimate users from purchasing our name and diverting traffic to their fraudulent websites. An increase in the top level domains will exponentially increase these costs.

ICANN's current proposal requires trademark holders to register their trademarks in a Trademark Clearinghouse and then purchase or block each trademark in each new top level domain (an expense that most non-profits and small businesses cannot afford). Instead of the current proposal, ICANN should block the new TLD registries from selling domains that belong to trademark holders and have been properly registered in the Trademark Clearinghouse.

As an example of the backward manner in which ICANN "protects" trademarks, it is notable to consider the experience the CBBB had in the most recently opened top level domain, the .xxx TLD operated by ICM Registry for the adult entertainment industry. Any trademark holder that wanted to ensure that its trademark was not sold in that registry had to block it during the "sunrise" period. Otherwise, ICM could sell the trademark as domain names, a common practice. In all, ICM and the registrars selling to .xxx made approximately \$23 million from this type of defensive registration by trademark holders who simply wanted to protect their good names from abuse.

Even more astounding was the fact that ICM Registry refused to accept CBBB's registration of its most famous trademark ("BBB," one of the most recognized trademarks in North America) because ICANN allowed ICM to reserved bbb.xxx as a premium name that it can later auction off to the highest bidder.

Another type of Internet crime and organizational identity theft occurred just yesterday when the BBB network e-mail and registered torch logo were used as tools in a widespread phishing scam that sent e-mails to thousands of people across North America and victimized unsuspecting e-mail recipients who believed these e-mails came from BBB. Despite best efforts, long hours and wasted resources, it is difficult to identify the perpetrators of phishing scams such as this.

ICANN was authorized to operate the domain naming and addressing system under the condition that it act in the public interest, per the terms of its Memorandum of Understanding with the Department of Commerce and its subsequent Affirmation of Commitments. To fulfill this public interest requirement, ICANN must balance the desire for greater competition on the Internet with suitable protections for legitimate organizations and hard working business owners. That is essential to fulfilling its public interest commitment.

Without more controls on Internet registries and registrars, the Internet will increasingly serve criminal interests over the public interest. More resources must be made available to combatting Internet crime. We recommend that these strong actions be taken before ICANN expands top level domains, an expansion that will only exacerbate these grave problems.

The Council of Better Business Bureaus and our entire BBB network appreciate the work of the Committee in helping solve these issues that impact large and small companies, nonprofits, charities and, ultimately, consumers.

Sincerely,

STEPHEN A. COX,  
*President and CEO,*

Council of Better Business Bureaus, Inc.

DELL, INC.  
*Washington, DC, December 7, 2011*

Senator JAY ROCKEFELLER IV,  
Chairman  
Committee on Commerce, Science, and  
Transportation  
Washington, DC.

Senator KAY BAILEY HUTCHISON,  
Ranking Member  
Committee on Commerce, Science, and  
Transportation  
Washington, DC.

Dear Chairman Rockefeller and Ranking Member Hutchison:

Thank you for committing your and the Committee's time and resources toward exploring the implications of the International Corporation for Assigned Names and Numbers' (ICANN) generic top-level domain (gTLD) expansion plan. This proposal is of great concern to Dell and our many online customers.

As a company that transacts significant business online, Dell is already a major target of online criminals who fraudulently incorporate our trademark into domain names in attempts to steal individuals' private information, sell dangerous counterfeit products, or otherwise defraud consumers. Dell expends significant resources, in the form of litigation and defensive domain name procurement, to counter these threats to consumer welfare in the existing universe of domain names. ICANN's plan to multiply the size of that universe will both multiply the expenses required to undertake those defenses, as well as multiply the potential online threats to consumers. We believe that the inevitable result of ICANN's current plan will be erosion of consumer trust in ecommerce, along with significant new expenses on all honest companies that transact business online—expenses that are particularly undesirable during a time when our economy needs companies to invest instead in innovation and job creation.

ICANN's multi-stakeholder process did not adequately address the concerns of stakeholders in the domain name system, and Dell believes it imperative for the U.S. Government to now take steps to ensure that ICANN fulfills its obligations to resolve these serious issues. We respectfully request that you and your colleagues encourage the Department of Commerce to ask ICANN, under the Affirmation of Commitments Agreement, to delay implementation to fully review and work to resolve stakeholder concerns, particularly those that threaten the consumer trust that currently enables ecommerce to thrive.

Respectfully,

REBECCA MJ GOULD,  
*Vice President,*  
Global Government Relations  
and Public Policy.

---

PREPARED STATEMENT OF JIM GIBBONS, PRESIDENT AND CEO,  
GOODWILL INDUSTRIES INTERNATIONAL, INC.

Mr. Chairman, Ranking Member, and members of the Committee, on behalf of Goodwill Industries International, Inc., I appreciate this opportunity to submit written testimony on the Internet Corporation for Assigned Names and Numbers (ICANN) expansion of new generic top level domains (new gTLD program).

Goodwill Industries® is comprised of 165 independent, community-based Goodwill® agencies in the United States and Canada and 14 international affiliates. Collectively, Goodwill's network of local agencies provides employment training, job placement services and other community services to nearly 2.5 million people annually. In addition, 170,000 people obtain meaningful employment as a result of Goodwill career services programs. These employees earn \$2.7 billion in salaries and wages and contribute to their communities as productive, taxpaying citizens.

Goodwill Industries is one of the early organizational members of the Not-for-Profit Operational Concerns Constituency (NPOC). After several years of discussing the new gTLD program, the ICANN board identified the nonprofit sector as an under-represented voice within the ICANN community and Internet governance, thus appointing a new councilor to represent and promote the needs of nonprofits in the fall of 2009. In June, 2010 the nonprofit voice had increased sufficiently and warranted the formation of a new constituency. NPOC was formally approved by the ICANN board on June 24, 2011. Unfortunately by the time the nonprofit sector was recognized and able to raise valid concerns, the proposed guidelines for the new gTLD program has undergone many revisions. NPOC currently represents 23 nonprofits from around the world, 11 of which are based in the United States including the YMCA. Many other applications are pending membership, demonstrating the increased interest by nonprofits of this issue. Goodwill Industries supports the testimony provided by Angela Williams, General Counsel, YMCA of the USA on behalf of her agency and NPOC.

As a member of NPOC and one of the five most valuable and recognized nonprofit brands as well as a leading social services enterprise, Goodwill Industries has several concerns with the new gTLD program, including: budgetary concerns; the increased risks of fraud, cybersquatting, and trademark infringement; and public confusion.

#### **Budgetary Concerns**

The ultimate cost in proceeding through the entire process of applying for a gTLD could reach several hundred thousand dollars. The initial application cost is to be approximately \$185,000 plus an additional annual cost thereafter of at least \$25,000 for a required ten-year term. This does not include the legal fees required to prepare

the application and certain amounts required to be in escrow. Furthermore, additional costs can be incurred if an applicant is required to defend the application. For example, if ICANN requires an extended evaluation of an application, the applicant may have to pay an additional \$50,000 including fees to defend the application which range from \$1,000 to \$5,000 in filing fees per party per proceeding, and an additional \$3,000 to \$20,000 in costs per proceeding, which must be paid up front.

Should Goodwill choose not to participate in the new gTLD program, there is a great risk that another entity will apply for the use of the name “goodwill” or one that is similar—such as a misspelling of the word “goodwill”. In the likely event that another entity applies for a top-level domain that contains “goodwill”, the costs for filing an objection are expected to be \$30,000 to \$50,000.

As a nonprofit social enterprise committed to its mission of eliminating barriers to opportunity and helping people in need reach their fullest potential through the power of work, Goodwill Industries and its local members simply do not have the resources to participate in the new gTLD and will certainly not be able to compete against for-profit organizations with resources and reserves available for intellectual property protection. In these tough economic times when faced with decreased donations and increases in the number of people seeking services, Goodwill and other nonprofits must continue to use funds to provide critical services to our communities. Goodwill simply cannot afford thousands of dollars to become a domain name registry solely to ensure brand protection. Becoming a domain name registry is not part of Goodwill’s mission, yet protection of its reputation and brand is critical. Founded in 1902, Goodwill has a long history and a solid reputation with the millions of shoppers, donors, and people who use our services. Last year Goodwill earned the trust of 74 million donors and provided job-training and employment services to nearly 2.5 million people.

#### **Risk of Fraud and Public Confusion**

The primary enforcement mechanism of the new gTLD program is the Trademark Clearinghouse where registered trademark owners can protect their registered trademark rights. Many of the costs of listing marks in the Trademark Clearinghouse are still unclear, creating uncertainty as to whether this is a viable option for nonprofits to protect their brands.

The Trademark Clearinghouse will only apply to exact matches of trademarks, rather than common misspellings, etc. that fraudsters and cybersquatters often use to deceive and confuse Internet users attempting to locate a particular nonprofit. Nonprofits are not in a position to register their marks using hundreds of additional gTLDs, particularly at premium prices.

Bad actors such as fraudsters and cybersquatters who register and use domain names in bad faith to take advantage of the established trust between nonprofits and the public and the brand reputation of other well-known entities have existed for many years. Goodwill Industries recently learned of an unauthorized entity using its name to fundraise online and in a local community. Potential funders were confused about which organization was seeking donations and for what purpose. Unfortunately this is a common occurrence as trademark infringement is becoming more rampant.

The likely increased public confusion and fraud that will occur in the new gTLD space will be particularly devastating for nonprofits. If nonprofits, including Goodwill and our members, are not able to adequately protect names and trademarks, bad-faith domain name registrants will be able to inappropriately profit from hundreds of domain names that are identical or similar. In addition, those bad actors may disseminate dangerously false information to Internet users, greatly increasing the likelihood that the public will be misled.

#### **Conclusion**

Goodwill Industries believes ICANN should eliminate the costs—or at a minimum, *drastically* reduce the costs—for verified nonprofits to participate in the new gTLD program. Furthermore, verified nonprofit trademarks should be exempt from the new gTLD program at little-to-no cost and mechanisms for trademark protection within the new gTLD program should be significantly strengthened.

Goodwill is an innovative social enterprise and as such has expanded its presence on the Internet and increased its mobile accessibility to meet the needs of its shoppers, donors, and program participants. The zip code locator is the most popular feature of [www.goodwill.org](http://www.goodwill.org) where one can find the nearest Goodwill to shop, donate, volunteer, and/or receive job-training and employment services. Like many nonprofits, Goodwill is also increasing its online fundraising capacity. As Goodwill continues to see growth in these areas, protecting our brand, reputation, and the non-

profit sector as a whole is more important than ever. However, these protections should not come at the expense of the critical services that nonprofits provide.

Thank you for taking the time to consider these consequences of the new gTLD program. We look forward to continuing our work with ICANN via our participation in NPOC to ensure the voice of the nonprofit sector and the people we serve is heard.

---

EASTER SEALS  
December 12, 2011

Hon. JOHN D. ROCKEFELLER IV,  
Chair,  
Committee on Commerce, Science, and Transportation,  
United States Senate,  
Washington, DC.

Dear Senator Rockefeller:

Easter Seals is pleased to endorse the testimony of the Not-for-Profit Operational Concerns Constituency (NPOC) before the United States Senate Committee on Commerce, Science, & Transportation on the issue of the Internet Corporation for Assigned Names and Numbers' (ICANN) new Generic Top-Level Domain Name Program (new gTLD Program).

Easter Seals, like many non-profit organizations, increasingly relies on the Internet for communicating and fulfilling our mission to provide services and supports to people with disabilities and other special needs. The potential for cybersquatting and fraud could be greatly increased under the gTLD Program and groups like Easter Seals would need to divert greatly needed resources away from services to protect ourselves. We believe that the new gTLD Program, as currently defined, will ultimately create unintended, and costly, consequences for not-for-profit organizations.

Thank you for your consideration.

Sincerely,

JENNIFER DEXTER,  
*Assistant Vice President,  
Government Relations.*

---

PREPARED STATEMENT OF THE NATIONAL RESTAURANT ASSOCIATION

The National Restaurant Association appreciates the opportunity to register the U.S. restaurant industry's strong opposition to the January 2012 roll-out of the new generic top-level domain (gTLD) program approved by the Internet Corporation for Assigned Names and Numbers (ICANN) in June 2011.

The Association is the leading business association for the restaurant and foodservice industry. Our industry is comprised of 960,000 restaurant and foodservice locations. These nearly 1 million restaurant locations serve more than 130 million Americans every day. Our members include multi-state, multi-unit restaurant brands with thousands of locations worldwide and small independent businesses with a single location.

The restaurant industry plays a significant role in our Nation's economy. Restaurants will generate an estimated \$604 billion in sales this year, with an overall economic impact of more than \$1.7 trillion. The restaurant industry is one of the Nation's largest private-sector job creators, employing about 12.8 million people, representing nearly 10 percent of the U.S. workforce.

The Association joins more than 100 other major business associations and companies in the Coalition for Responsible Internet Domain Oversight (CRIDO) in urging the Department of Commerce to stop or delay ICANN's new gTLD program. We were part of CRIDO's petition to U.S. Department of Commerce Secretary John Bryson in November urging the Department to work with ICANN on delaying and reconsidering the program.

We believe ICANN's gTLD program would impose billions of dollars in unnecessary costs on the restaurant industry at a time when restaurant operators are looking forward to investing in their businesses and hiring employees after the worst recession in decades. Profit margins in restaurants are notoriously slim, with restaurants averaging about 4 percent in pre-tax profits on every dollar in sales. The ICANN program will divert scarce restaurant resources away from job creating, business-building activities. These are dollars far better spent reinvesting in our businesses.

If ICANN proceeds as planned, the organization will start accepting applications next month for hundreds and ultimately thousands of new top-level domains. Restaurants of all sizes will be forced to apply for new domains to protect their brands and trademarks. Costs include a \$185,000 application fee for each new top-level domain. Restaurants and other companies also likely would be forced to register numerous second-level domains—the words to the left of the “dot” in Internet addresses—within the new top-level domains. Costs would be driven higher by legal, marketing and other costs. Some businesses have put the cost of registering a single top level domain at \$2 million or more over the initial 10-year contract as companies submit applications, watch and defend their domains, monitor for infringement and litigate to block abuse. Costs could run higher if businesses are forced to buy their own Internet names in auctions.

The Internet is increasingly central to restaurateurs’ efforts to attract guests and grow their businesses. This is true for both major restaurant brands and independent restaurants. Association research shows that Americans increasingly go online for information about restaurant menus, specials, nutrition facts and more. Restaurants rely on the Internet to reach guests. Our members would have little choice but to apply for domain names for both commercial and defensive reasons. For our largest restaurant-member brands, the price tag is exorbitant. For the hundreds of thousands of smaller restaurant operators who depend on the Internet to communicate with guests, the costs and confusion could be insurmountable.

Even beyond the financial toll the gTLD program will exact on millions of U.S. businesses, the Association believes that ICANN’s program will confuse consumers by spreading Internet searches across hundreds or even thousands of new top-level domains. As confusion grows, each domain name becomes less valuable. This could undermine consumer trust in the system and make it harder for the Internet to serve as the efficient conduit for business activity that it does today.

The U.S. government has delegated powers to ICANN to govern the domain-name process. ICANN is responsible for ensuring its actions further the public interest and promote consumer trust. ICANN says it has built consensus on its recommendations; indeed, its contract with the Department of Commerce requires this consensus. Yet the Association believes ICANN has failed to justify the need for the potentially explosive expansion in top-level domains or to get consensus from the millions of business stakeholders who will be affected by the program.

Finally, we believe ICANN has taken only minimal steps to educate and inform the business community and consumers about the new top-level domain process. If ICANN proceeds with the January roll-out of its gTLD program, businesses and non-profit organizations will be immediately affected. Yet even given the reaction of the business and non-profit communities to the ICANN program, there has been little education and information to help businesses and consumers understand the scope of what is about to happen. Millions of American business owners know nothing about the gTLD expansion. Information has filtered out slowly and sporadically since ICANN approved the program in June, leaving businesses and consumers in the dark about one of the biggest shake-ups in Internet marketing in decades.

The Association asks Congress and the Commerce Department to urge a reassessment of the gTLD program before its planned roll-out in January. We thank the Committee for holding this hearing to air the serious concerns of America’s business community with ICANN’s domain name expansion program.

---

PREPARED STATEMENT OF JOSH BOURNE, PRESIDENT,  
COALITION AGAINST DOMAIN NAME ABUSE (CADNA)

Chairman Rockefeller, Senator Klobuchar and distinguished members of the Committee, thank you for convening this hearing on the Internet Corporation for Assigned Names and Numbers (ICANN) and its program to expand the number of new generic top-level domains (gTLDs) in the domain name space. This is a drastic change that ICANN is about to implement. It will dramatically impact the space, and given the commercial significance of the Internet, it is critical that the United States Congress involve itself in matters of domain name space policy and regulation.

My name is Josh Bourne and I am the president of the Coalition Against Domain Name Abuse (CADNA). Over four years ago with the help of leading brand owners we founded CADNA, a 501(c)(6) non-profit association, to combat a variety of abuses on the Internet. CADNA represents businesses vital to the American and global economies from a wide range of commercial industries including financial services, manufacturing, pharmaceutical, leisure, high technology, and manufacturing. Our members include companies such as: Dell, DIRECTV, Lilly, Hewlett-Packard, Hil-

ton, HSBC, LEGO, Marriott, Nationwide, New York Life Wells Fargo, and Wyndham.

CADNA was founded in response to the growing international problem of cybersquatting, which is the bad faith registration of domain names that include or are confusingly similar to existing trademarks. In addition to the mounting legal costs that companies now face in defense of their own trademarks in the domain space, this infringement costs organizations billions of dollars in lost or misdirected revenue. CADNA works to decrease instances of cybersquatting in all forms by facilitating dialogue, effecting change, and spurring action on the part of policymakers in the national and international arenas. CADNA also aims to build awareness about illegal and unethical infringement of brands and trademarks online. In the four years since its inception, CADNA has generated valuable new intelligence to help inform and expertly guide its members and increase awareness of CADNA's mission. CADNA seeks to make the Internet a safer and less confusing place for consumers and businesses alike.

Thank you very much for the opportunity to present the views of our organization on this very important topic.

CADNA looks at the way that the New gTLD Program was developed as the product of a flawed system. CADNA believes that the goal of fostering innovation and competition through the expansion of the domain name space is not inherently objectionable, but rather, that the policy development process that ICANN conducted created a problematic program.

Since ICANN's June 20 decision to approve the Applicant Guidebook, CADNA has continued to promote changes in ICANN to improve governance, policy making, and to increase transparency. In addition, we have looked to find ways to ensure that ICANN follows through on its commitments with respect to the implementation of the gTLD policy and to develop recommendations that may improve the policy going forward.

CADNA's aim is to be a constructive partner in the Internet governance process. We have always supported ICANN's multi stakeholder system and strongly believe that, with some reforms, ICANN can better fulfill its designated mission. Our research efforts and conversations with hundreds of potential participants in the application process have resulted in several recommendations. I will be the first to admit that they need further development, but CADNA believes that they can serve as the basis of further dialogue with the Internet community and ICANN.

Here are some concrete steps that can be taken to immediately improve the implementation of the gTLD policy:

- A declaration by ICANN of when the next applicant round will take place would relieve much of the anxiety surrounding the first round. CADNA has found that businesses feel forced into applying for new gTLDs in the first round, lest they be put at a disadvantage relative to their competitors who may gain an edge by acquiring their own new gTLDs.
- Businesses are worried about dealing with the cybersquatting that will occur to the "left of the dot" in the new space—in other words, they are worried about the defensive registrations that they will need to pay for in others' new gTLDs and the infringing domains that ultimately get registered by cybersquatters. To alleviate this issue, ICANN should require registries to give brand owners the option to buy a block on their trademark before any registration period (sunrise or land-rush) opens. This can be offered at a lower cost than sunrise registrations have been priced at in the past—this precedent has been set with the blocks offered in .XXX, where the blocks are made in perpetuity for one, non-recurring fee.
- If ICANN is awarded a renewed IANA contract, the National Telecommunications and Information Administration (NTIA) should renew the IANA contract for one year. In this one year, there should be an evaluation of whether ICANN followed through on its commitments with regard to the gTLD process and any extension of the contract should be contingent on conducting internal reforms to improve governance and transparency.

As the process moves forward, CADNA believes there will be many more improvements that can be made. In the coming months, CADNA intends to monitor progress and to research and develop other recommendations.

Mr. Chairman, you have been an outspoken leader on Internet issues and on Internet governance. The exponential expansion of the Internet created by ICANN's gTLD policy holds tremendous opportunities for innovation and for improving the lives of many. At the same time, the new policy creates many challenges in regard

to the enforcement of individual rights, intellectual property protection, and consumer fraud.

CADNA would like to seize this opportunity with you and your Committee, the Obama Administration, and other private and public partners to develop an ICANN policy making process that will not repeat the mistakes of this gTLD policy, but one that will produce policies that will improve the Internet experience for all Internet users.

---

Hon. JOHN D. ROCKEFELLER IV,  
Chairman,  
Commerce, Science, and Transportation  
Committee,  
United States Senate,  
Washington, DC.

Hon. KAY BAILEY HUTCHINSON,  
Ranking Member,  
Commerce, Science, and Transportation  
Committee,  
United States Senate,  
Washington, DC.

Dear Chairman Rockefeller and Ranking Member Hutchinson:

In response to the December 8 hearing regarding new generic top-level domains (gTLDs), we write to register our concern with the mischaracterization of elements of the gTLD program, and to communicate our support for new gTLDs.

The organizations signing this letter believe the introduction of new gTLDs will be innovative and economically beneficial, that the Internet Corporation for Assigned Names and Numbers (ICANN) has conducted an inclusive and well-handled review of the program, and that preparations for gTLD introduction are sufficient to ensure Internet security and stability and to protect rights holders.

ICANN, along with multiple relevant stakeholders and policy organizations, including the Generic Names Supporting Organization, undertook a very lengthy, comprehensive and transparent process that led to the approaching application for and introduction of new gTLDs. Since the formation of the multi-stakeholder Internet governance, no process has been as inclusive, and no level of outreach has been as far-reaching as the one facilitating discussion of namespace expansion. ICANN, its stakeholders, the intellectual property community, and governments are to be applauded for actively seeking, welcoming and incorporating the input of so many.

As undeniably inclusive as this process has been, however, we believe it is even more important to recognize the significant social and economic opportunities new gTLDs will provide, particularly in a fragile global economy. Since ICANN's establishment in 1998, a key element of its mandate has been not only to ensure the secure and stable operation of a global domain name system, but to promote the competition and consumer choice that contributes to global economic growth. Established and developing economies are anticipating the new opportunities afforded by new gTLDs and it is noteworthy that this expansion will include internationalized domain names (IDNs), TLDs that permit Internet users, for the first time, to access domain names in their native languages and character sets.

Innovation and expansion into new areas of technology always bring questions and concerns-further development of the namespace is no exception. Since ICANN's inception in 1998, it has successfully managed careful generic namespace expansion while addressing the well-known concerns of many, including cybersecurity experts, government representatives, intellectual property rights holders, and others. Since the process for the current round of expansion was introduced in 2005, more than six years ago, all interested stakeholders took unprecedented steps-well in advance-that provide further protections against infringement, damage or harm to national interests. More than a dozen open-to-the-public global meetings, nearly fifty public comment periods, a dedicated meeting between the ICANN Board and its Governmental Advisory Committee, and the exchange and discussion of tens of thousands of documents confirm that the decision in favor of new gTLDs can't be logically characterized as sudden.

These painstaking deliberations have involved some of us more than others. However, we each equally respect and support the efforts and the intentions of ICANN in this beneficial endeavor. We are confident the evaluation process for applicants, including the stringent attention to DNS stability and security, will allow for a safe and productive new gTLD introduction.

While new gTLDs will experience different levels of end-user adoption, we optimistically anticipate the useful possibilities for new services and applications from the namespace, the positive economic impact in the United States and globally, the inclusion of developing nations in Internet growth and development, and the realiza-

tion of the hard work and preparation of the thousands of interested stakeholders dedicated not only to their own interests, but that of the global Internet.

Sincerely:

Alexa Raad, Chief Executive Officer, Architelos	Loren Salman, Chief Executive Officer, Far Further
Alexander Siffrin, Chief Executive Officer, Key Systems GmbH	Mason Cole, Principal, 5x5 Communications
Andreas Schreiner, Chief Executive Officer, InterNetWire Communications GmbH	Michael Berkens, Director, RightOfTheDot LLC
Angie D. Graves, President, WEB Group, Inc.	Mike Rodenbaugh, Founder, Rodenbaugh Law
Antony Van Couvering, Chief Executive Officer, Minds + Machines	Monte Cahn, President/Director, RightOfTheDot LLC
Bhavin Turakhia, Chief Executive Officer and Founder, Directi	Nacho Amadoz, Legal & Policy Director, Fundació PuntCAT
Bret Fausett, President and Founder, Internet Pro APC	Paul Stahura, Chief Executive Officer, Donuts Inc.
Clyde Beattie, Principal, The Yorkland Group	Richard Wilhelm, Principal, RJW Partners, LLC
Dr. Liz Williams, Chief Executive Officer, Sedari	Robert Connelly, President, Domains Only
Elliot Ness, Chief Executive Officer, Tu cows	Robin Gross, Executive Director, IP Justice
John Styli, Chief Operating Officer, Far Further	Steve Miholovich, Sr. Vice President Sales & Marketing, Safenames Ltd.
Jonathon Nevett, President, Domain Dimensions, LLC	Susan Prosser, Vice President, Marketing, Domain Tools
Kevin Saimon, President, Urban Brain	Tad Yokoyama, President, Interlink Co., Ltd.
Krista Papac, Chief Strategy Officer, ARI Registry Services	William Mushkin, Chief Executive Officer and Founder, Name.com

cc: Members of the Commerce, Science and Transportation Committee

