

Congress of the United States
Washington, DC 20515

August 7, 2012

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

Dear Mr. Atallah,

In December 2011, we wrote regarding ICANN's program to expand the number of generic top level domains (gTLDs) from the 22 existing gTLDs (such as ".com") to potentially thousands of new extensions. Since then, brand-owners, consumers, and members of the law enforcement community have continued to voice concerns about the adequacy of ICANN's proposed steps to protect against increased risks of cyber-squatting, fraud, and abuse in the new gTLDs. We are in a critical phase as ICANN determines which gTLDs to authorize and what policies to implement in the new registries. We therefore ask that you provide us with further details about the steps ICANN is taking to fulfill its commitment to ensure that the New gTLD process will provide "a secure, stable marketplace" with input from "the community as a whole."

In the response to our December 2011 letter, ICANN emphasized that the New gTLD program "includes robust processes to assure that the community as a whole – with particular opportunities for governments and rights holders – has the opportunity to raise objections that could lead to the rejection of applications," including because of user confusion, infringement of legal rights, and misappropriation of community names or labels. Despite this assurance, many members of the public outside the ICANN community are unaware that the New gTLD program is underway. Of those who are aware, few know about the public comment process or comprehend that their opportunity to participate in this forum is scheduled to end in less than a week.

With potentially sensitive names like ".church", ".kids", and ".sucks" proposed, the more than "two billion (and growing) Internet users around the globe" that ICANN has stated the program is "designed to benefit" should both be aware of their right to comment on the new gTLDs and have a full and meaningful opportunity to do so. As a practical matter, the public comments forum is the only mechanism for most users to comment directly on applications without pursuing formal action before an arbitrator – a process that would require them to establish standing and bear legal expenses. Specifically, we ask:

- What steps has ICANN taken to inform members of the public outside the ICANN community about the New gTLD public comment process, and to ensure the public's maximum and meaningful consideration and participation?
- ICANN has appointed an Independent Objector to review gTLD applications, but ICANN's Guidebook states that he may only raise objections that have been previously voiced by the public. Given this restriction, what steps is the Independent Objector taking

to encourage and maximize public input? What role will the Independent Objector play in articulating and representing public concerns about specific gTLD applications?

- Will ICANN confirm that it will keep open the New gTLD public comment forum so that the broader public can comment on applications, and the Independent Objector can receive their views? If not, then what is the justification for refusing to accept and consider such material comments from the public?

As discussed in our December 2011 letter, we are also concerned that inadequate protections may provide increased opportunities for cyber-squatters and other rogue actors to mislead consumers by registering fraudulent websites that incorporate familiar trademarks. To counter this threat, ICANN created a Trademark Clearinghouse that can notify trademark holders when someone registers a second-level domain name that uses their trademark. However, ICANN's current policy only requires the Clearinghouse to be available for the first 60 days after a registry launches. Moreover, the Clearinghouse will only give notice when someone registers a website that is *identical* to a trademark; not when the website contains the trademark in a varied form. As an example, this means that a nonprofit such as the YMCA will receive notice only if a user registers a website such as www.ymca.give or www.ymca.charity within the first 60 days of the ".give" or ".charity" registry. The YMCA would not receive notice if a person registers those names after 60 days, or if someone registers a closely related name such as www.ymcaDC.charity.

Businesses and consumers remain concerned that these policies insufficiently defend against the heightened risks of fraudulent activity in the new gTLDs. They assert that ICANN's policies easily could be strengthened by requiring registries to use the Trademark Clearinghouse for more than 60 days, and by allowing trademark holders to sign up for Clearinghouse notices of website registrations that contain their trademark in varied form (such as the trademark plus a generic term). Please tell us:

- Is there anything that prevents ICANN from requiring registries to make the Trademark Clearinghouse available as a permanent service, extending it beyond the first 60-day period? Have Clearinghouse operators analyzed the feasibility of providing more meaningful and comprehensive trademark notifications, instead of only providing notice when users register identical terms?
- In the response to our December 2011 letter, ICANN suggested that the Government Advisory Committee agreed to the current Clearinghouse policies based on ICANN's commitment to review those policies "post-launch." When does ICANN intend to conduct this review? Is ICANN committed to making changes in response to specific suggestions and comments received as part of the "post-launch" review? In what ways might ICANN enhance its Clearinghouse policies after the new gTLDs launch?
- A further rights protection mechanism ICANN highlights is the availability of a "sunrise period" when certain trademark holders may reserve names in a new gTLD before it opens. Some are concerned that registries may use strategic pricing to take advantage of businesses and individuals who feel compelled to defensively register their names. What policies, if any, does ICANN have in place to discourage this activity and allay these concerns?

Finally, we understand that ICANN is currently working to expand its compliance capabilities to monitor and investigate cases of abuse. We are encouraged by this news, but are interested in receiving further details, including whether ICANN will dedicate a portion of the nearly \$350 million in gTLD application fees it has received to this initiative. We are also interested in receiving details about ICANN's ongoing negotiations to renew the Registrar Accreditation Agreement, including what additional security and anti-fraud measures the new agreement may contain.

ICANN has stated its commitment to create, through its New gTLD program, "a secure, stable marketplace through the implementation of enhanced rights protection mechanisms, malicious conduct mitigation measures and other consumer protections." We hope that ICANN will take every step to honor that commitment during the review and delegation process, and look forward to working closely with you on issues of mutual concern in the upcoming months.

Thank you, in advance, for providing information about ICANN's past and ongoing efforts to implement its commitments. We look forward to your response.

Sincerely,


PATRICK LEAHY
Chairman
Senate Judiciary Committee


LAMAR SMITH
Chairman
House Judiciary Committee


CHARLES E. GRASSLEY
Ranking Member
Senate Judiciary Committee


JOHN CONYERS, JR.
Ranking Member
House Judiciary Committee

CC:

Mr. Steve Crocker, Chairman, Board of Directors
Mr. Kurt Pritz, Senior Vice President, Acting New gTLD Program Director
Mr. Fadi Chehadé, Incoming President and CEO
The Honorable Rebecca M. Blank, Acting U.S. Secretary of Commerce
The Honorable Lawrence E. Strickling, Assistant Secretary for Communications and Information,
National Telecommunications and Information Administration, U.S. Department of Commerce
The Honorable Victoria A. Espinel, U.S. Intellectual Property Enforcement Coordinator
The Honorable Jon Leibowitz, Chairman, U.S. Federal Trade Commission