



The Internet Corporation for Assigned Names and Numbers

The Honorable Pat Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
House of Representatives
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
House of Representatives
Washington, DC 20515

Dear Chairman Leahy, Ranking Member Grassley, Chairman Smith and Ranking Member Conyers:

Thank you for your letter dated August 7, 2012 requesting information about ICANN's New gTLD Program. As you may know, ICANN received approximately 1,930 applications that are currently being processed according to the procedures specified in the Applicant Guidebook. As described in ICANN's response to your letter of December 27, 2011, the Applicant Guidebook incorporates significant protections to address the concerns raised by trademark owners, law enforcement, consumers and others during the seven-year development of the New gTLD Program.

ICANN agrees that the ongoing review of applications represents a critical phase of the program. We are pleased to provide the information requested. We provide you with some relevant background information, and then set out the specific questions identified in your letter.

Availability of Objection Processes and Community Inputs

In line with its commitments, ICANN provides several avenues by which stakeholders can raise concerns with applications received in the New gTLD Program, designed to protect against the types of confusion and abuses raised in your letter.

First, the objection period is open for the filing of formal objections on the grounds of String Confusion, Legal Rights, Limited Public Interest and Community. The three dispute resolution service providers identified to hear these four types of objections are staffed to handle and make determinations on the objections filed. Information on each of the objection processes, as well as procedural information for each of the providers is available at

<http://newgtlds.icann.org/en/program-status/objection-dispute-resolution>. Easy access to this information is a key factor in encouraging participation by any person or entity with valid grounds for objection. In addition, the Independent Objector has been identified, and his office is functional and

working towards the consideration of filing formal objections in the public interest as deemed necessary or appropriate (<http://www.icann.org/en/news/announcements/announcement-14may12-en.htm>).

Another important component of the protections is available to the governments through ICANN's Governmental Advisory Committee (GAC), made up of representatives of 118 member governments and 25 observers. The Early Warning procedure enables governments (and those they represent) to signal to applicants that they have concerns with requested top-level domains that are controversial or sensitive. In addition, the GAC may provide advice directly to the ICANN Board of Directors on any individual application, including that the application should be rejected as not being consistent with the public interest.

ICANN Extended the Community Comment Period

In your letter, you ask: 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?

ICANN Response: The application comment period was launched on June 13 2012 and it will remain open for the life of the new gTLD evaluation process. The 60-day period you describe was originally specified through community discussion, i.e., that ICANN planned to send all comments received during the first 60 days of publication of the applications directly to the evaluation panels for their review. In response to community comments – similar to those raised in your letter – ICANN announced on August 10, 2012 that the comment period would be extended for an additional 45 days, ending on 26 September 2012 (<http://www.icann.org/en/news/announcements/announcement-2-10aug12-en.htm>). As of today, ICANN has received over 6700 comments on applications through this comment period, all publicly viewable at <https://gtldcomment.icann.org/comments-feedback/applicationcomment/viewcomments;jsessionid=F9755AD774A4E70742C25405580DCE51>. The extension is consistent with ICANN's commitment to act as a responsible steward of this program.

Raising Public Awareness Has Been a Key Focus

Another specific question raised in your letter is: 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 Response: ICANN's communications team has worked hard to publicize the availability of the objection processes, as well as the extension of the comment period. Communications activities are designed to reach people outside of the ICANN community to provide them with information on the New

gTLD Program, and to make the information accessible and relevant. This encourages both maximum and meaningful participation in ICANN's processes.

ICANN representatives have been featured in news stories from major news outlets, including Reuters, CNN, BNA and the Wall Street Journal, and additional efforts to raise awareness are ongoing. As a result of ICANN outreach leading up to the opening of the application window, more than 10,000 articles about it have appeared around the world, with about 2,500 of these articles appearing in developing economies. These numbers account for only established media outlets and do not take into account blogs written about the program. Many more articles have appeared since the opening of the window.

ICANN representatives including Directors, staff, community members and others spoke at 59 live events, reaching about 14,500 people across all five geographic regions.

ICANN also conducted a social media campaign through Facebook and Twitter updates. We tweet 5-8 times a day and the number of followers increased from 7,000 to 45,000 (over 500%) within a few months. A Google ad campaign ran for seven weeks in 145 countries, including the 35 countries that the World Bank defines as lowest income. There were six ads in the series, targeted geographically by IP address. ICANN ran a banner ad campaign targeting Chief Marketing Officers in developing economies. Together, the CMO-targeted campaign and the Google Ad campaign sent nearly 22,000 visitors from 136 countries to the new gTLD website and delivered more than 5,500,000 impressions.

Currently, ICANN is making full use of social media tools to publicize the availability of the objection processes and the comment period, and links to the comment pages and objection information are prominently featured on ICANN's New gTLD Program microsite (newglds.icann.org).

The Role of the Independent Objector

On the Independent Objector, you inquire: 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?

ICANN Response: The Independent Objector's mandate is to act solely in the best interest of public users of the global Internet and not to act on behalf of any particular individuals or entities. The Applicant Guidebook states, "in light of the public interest goal noted above, the [Independent Objector] IO shall not object to an application unless at least one comment in opposition to the application is made in the public sphere." This relatively minor limitation was inserted through Internet community discussion. That working group balanced the need for the Independent Objector safeguards and for limiting restrictions on expression.

To determine whether to pursue an objection, the Independent Objector evaluates all submitted comments and can also review any other materials, e.g., blogs, articles, surveys, and other relevant application information. He does not solicit comments nor does he pursue objections that were not first raised in the public comments.

Rights Protection Mechanisms

The Trademark Clearinghouse is a tool that will be available across gTLD launches to support rights protection mechanisms. The required startup mechanisms that are supported by the Trademark Clearinghouse are the sunrise period, i.e., the period before the opening of general registration where rights holders registered in the Trademark Clearinghouse can register names within the TLD, and the trademark claims service, a notice to those attempting to register trademarked names. These are *minimum* requirements that were agreed on by the ICANN community, balancing the interests of rights holders with those of registrants, registries, and others.

Scope of the Trademark Clearinghouse and Required Notices

In your letter, you ask: *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?*

ICANN Response: There is nothing precluding registries from electing to continue to offer the trademark claims service beyond the required 60-day period; indeed, the Applicant Guidebook incentivizes registries to provide rights protections that exceed minimum requirements. In implementation of the claims process to be used with the Trademark Clearinghouse, the possibility for registries to offer an extended trademark claims period has been a key factor in the design, and care is being taken to avoid a technical implementation that would make it impractical for registries to offer extended claims periods. For the first round of new gTLDs, ICANN is not in a position to unilaterally require today an extension of the 60-day minimum length of the trademark claims service. The 60-day period was reached through a multi-year, extensive process with the ICANN community. One reason for this is that there are existing IP Watch services that address this needs. Those community members that designed the Trademark Claims process were cognizant of existing protections and sought to fill gaps, not replace existing services and business models.

Regarding the scope of the notices provided in the trademark claims process, a notice is provided to rights holders based a definition of “match” that was agreed upon in the community discussions. This definition includes the following:

“Identical Match” means that the domain name consists of the complete and identical textual elements of the mark. In this regard: (a) spaces contained within a mark that are either replaced by hyphens (and vice versa) or omitted; (b) only certain special characters contained within a trademark are spelled out with appropriate words describing it (@ and &); (c) punctuation or special characters contained within a mark that are unable to be used in a second-level domain name may either be (i) omitted or (ii) replaced by spaces, hyphens or underscores and still be considered identical matches; and (d) no plural and no “marks contained” would qualify for inclusion.

It is important to note that the Trademark Clearinghouse is intended to be a repository for existing legal rights, and not an adjudicator of such rights or creator of new rights. Extending the protections offered through the Trademark Clearinghouse to any form of name (such as the mark + generic term suggested in your letter) would potentially expand rights beyond those granted under trademark law and put the Clearinghouse in the role of making determinations as to the scope of particular rights. The principle that rights protections “should protect the existing rights of trademark owners, but neither expand those rights nor create additional legal rights by trademark law” was key to work of the Implementation Recommendation Team, a group of experts in the ICANN community who initiated intense work to recommend rights protection mechanisms in new gTLDs. See <http://archive.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>. Though ICANN cannot mandate that the Trademark Clearinghouse provide notices beyond those required in accordance with the Registry Agreement, there is nothing to prevent the Trademark Clearinghouse or others from offering additional services that would, for example, give notice regarding various forms of a trademark. This was one of the further services that has been raised and contemplated in community discussions.

Trademark Clearinghouse is Expected to be Cost-Effective for Participants

On cost-related issues, you ask: 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?

ICANN Response: ICANN has also heard the concerns that the rights protection mechanisms included within the New gTLD Program may be seen as too costly for some trademark holders. In development of the Trademark Clearinghouse, one of the foundational objectives is to make its services cost effective for participants. This can be seen, for example in the RFI issued for vendors to operate the Trademark Clearinghouse. See <http://archive.icann.org/en/topics/new-gtlds/trademark-clearinghouse-rfi-03oct11-en.pdf>. ICANN cannot,

however, set prices at which registries offer services to registrants and rights holders. As seen above, community discussion has already demonstrated that offering expanded rights protection services may be an area of competition and differentiation among new gTLD registries.

Work is Underway to Plan for Reviews

Another question raised in your letter is: *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?*

ICANN Response: ICANN continues to commit to the review and implementing improvements based on its findings. The process for review of the effectiveness of all new rights protection mechanisms has certain, definite triggers. ICANN has committed to other reviews, such as a review of the effect of new TLDs on the root zone, a post-delegation economic study, as well as the review called for the Affirmation of Commitments, discussed in our letter of 2 February 2012. In fact, ICANN has already begun planning for how to do the specific reviews on rights protection mechanisms, as seen in our June 2012 planning session to prepare for the next round of new gTLDs.

When gTLDs "go live" and the Clearinghouse processes become operational, reporting both from the Clearinghouse and registries is being designed to identify issues where more work may be required, and will provide important information regarding modifications to be considered by the community. It is premature for ICANN to predict what enhancements to rights protection mechanisms (or other parts of the Applicant Guidebook) may result from the completion of the identified reviews. ICANN does commit to operating these reviews in a timely and transparent fashion, and to listening carefully to the community views on these topics.

Continued Enhancement to ICANN's Contractual Compliance Department

On the topic of ICANN's Contractual Compliance Department, you note: *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.*

ICANN Response: ICANN's Contractual Compliance department continues to grow, with the addition of three full time staff members since the Prague meeting. ICANN now has 15 full-time employees with language skills to communicate in Arabic, English, French, German, Hindi, Japanese, Korean, Mandarin, Spanish and Urdu in order to address abuses globally. The Contractual Compliance team is executing on a phased plan to enhance its systems and capabilities in advance of the entry of new gTLDs into the domain

name system. For example, the Contractual Compliance department is designing proactive audit programs for contracted registries and registrars, with full time staff dedicated to audit activities. The Contractual Compliance department has released detailed information on its processes and approach, see <http://www.icann.org/en/resources/compliance/approach-processes>, and will continue to provide information to the community on its improvements.

The evaluation fees are intended to be revenue neutral. That is, all of the fees will go to the evaluation and program development effort. The application fees were set to cover the costs of performing the required evaluations, not to contribute generally to ICANN's operations. Because of the cost recovery nature of the New gTLD application fee, ICANN is not able to commit that portions of the fees received will be allocated to the Contractual Compliance department. However, building on Contractual Compliance is a priority in the FY13 budget that was approved in June 2012 (see <http://www.icann.org/en/about/financials/adopted-opplan-budget-fy13-24jun12-en.pdf>), and the amount budgeted (US\$6.09 million) for Contractual Compliance activities in FY13 is over US\$2.2 million higher than the amount forecast in FY12. Though ICANN cannot use the New gTLD Program fees to increase its investments in Contractual Compliance activities, ICANN is already demonstrating its commitment to invest additional operating funds to the Contractual Compliance function. ICANN will continue to deliver on that commitment.

There is the possibility that excess funds will remain after ICANN completes the processing of new gTLD applications. ICANN has already committed that it will publicly report the accounting of the fees generated by the new gTLD application process, and if excess funds remain, there will be a transparent process for the determination of how those funds are spent. This will be a community discussion, and the ICANN community will provide input to ICANN on what the best use of those funds may be. Ultimately, the community may determine that some funds are appropriately used to strengthen the Contractual Compliance department, but that is not a commitment that ICANN is able to make at this time.

Registrar Accreditation Agreement Amendments

Finally, you requested an update on the ongoing work on amendments to the Registrar Accreditation Agreement: *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 Response: Since February 2012, when ICANN last provided information to you on the status of the negotiations, negotiations have continued to progress to reach amendments to the Registrar Accreditation Agreement (RAA) with ICANN-Accredited Registrars. ICANN and the registrars have reached agreement in principle on many issues that were recommended by representatives of law enforcement authorities, including the creation of a point of contact to handle claims of registration abuse,

requirements for public disclosure of certain new points of information about registrars, and the creation of a privacy/proxy accreditation agreement. ICANN and the registrars also appear to be in agreement in principle on including heightened compliance tools in the new RAA, including new grounds for termination and a commitment for registrars to self-report compliance with the agreement.

ICANN and the registrars engaged in intense conversation with the ICANN community at ICANN's public meeting in Prague in June 2012 to help address some of the remaining areas of focus for the negotiations, such as the verification of registrant data and the requirements for retention of points of data as identified by the law enforcement authorities. ICANN has also identified security-related obligations, such as supporting DNSSEC, as part of its negotiating position. These negotiations have continued and it appears that new areas of agreement are emerging. To further the negotiations, ICANN and the registrars will be meeting with representatives of the GAC and law enforcement this week. We expect the progress to continue.

Conclusion

ICANN remains committed to a preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet, seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.

Sincerely,

A handwritten signature in black ink, appearing to read "Fadi Chéhade", written in a cursive style.

Fadi Chéhade

President & CEO

cc:

Steve Crocker, Chairman, ICANN Board of Directors

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